

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, CLARENCE W. ROBNETT, WILLIAM
DWYER, and FRANK W. KETTENBACH,
Appellees.

Transcript of Record.

VOLUME V.

(Pages 1601 to 2000, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

(Testimony of Mrs. Martha E. Hallett.)

Q. Now, you don't remember whether you had a checking account there at that time or not? [1415—1085]

A. No, I wouldn't say positively, only I know I had money there.

Q. Do you remember whether or not he advanced you that money? A. No, he didn't.

Q. Do you have any idea how much money you had at the Lewiston National Bank at that time?

A. No, I don't.

Q. Have you any of your account books?

A. Well, I don't know whether I could look it up and find out or not, but I tell you, my money came in in collections, and I don't know. Sometimes, as I say,—

Q. Came in in what? Your money came in in what?

A. From collections—outstanding money from my husband's estate.

Q. And was all of your husband's estate deposited in the Lewiston National Bank? A. No.

Q. Do you mind telling us of what your husband's estate consisted? A. Do you mean the amount?

Q. Yes. A. Or what kind of—

Q. No—the amount.

A. I am not sure that I could do it.

Q. Well, approximately?

A. No. I might make a big mistake, Mr. Gordon; but I know that he left me a large estate, and I might say perhaps towards \$100,000.00. Now, you know, I can't tell you. You see, as I say, it was in

(Testimony of Mrs. Martha E. Hallett.)

outstanding—he left me a bank, and a grain business, and all that sort of thing; but I think, perhaps,—

Q. He left you a bank, you say?

A. A small, private bank.

Q. Where was the bank? [1416—1086]

A. Juliaetta, Idaho.

Q. Is that bank in existence now?

A. If it is it doesn't belong to me.

Q. And you say he left you what kind of a business—a grain business?

A. Yes. He left me, I think perhaps I should say something close to \$100,000.00, Mr. Gordon. I told you I wouldn't be anywhere exact about it.

Q. And have you that money now?

A. I think so.

Q. You say he left you a grain business?

A. Yes. Of course, I guess that is what they would call it.

Q. Well, what was it?

A. Have you heard of a tramway that was built up there at Juliaetta?

Q. No.

A. Well, it would be hard for me to tell you—most of the people here know about it—because there are warehouses both at the top and bottom of the hill, and there is a tramway to bring the grain from the top; and then they have a bank—a little bank.

Q. And was he the sole owner of that?

A. The sole owner.

Q. And have you that now?

A. Not very much of it. (Laughing.) But

(Testimony of Mrs. Martha E. Hallett.)

that's where my source of income has been from. That's what I say, I have my own money, Mr. Gordon.

Q. Did Mr. Kester conduct any of your business for you?

A. Mr. Kester has certainly done my business—oh, for a number of years. I went to him as a business man several years ago, in some of my complications.

Q. Have you ever sold your timber claim?

A. I never have. [1417—1087]

Q. Has anyone ever offered to purchase it from you? A. No, they never have.

Q. Have you ever given anybody an option on it?

A. No, sir.

Q. Have you ever authorized anybody to give an option on it? A. No one at all.

Q. How is that? A. No, I haven't.

Q. Have you paid the taxes on this land yourself?

A. I went the first year to the courthouse, and they told me I had a widow's exemption. I got no notice, but I went to the courthouse and told them I wanted to pay my taxes, and they said "Mrs. Hallett, you have no taxes to pay; you have a widow's exemption."

Q. Did I understand you to say that this is the only piece of property you own?

A. Yes, at present.

Q. Well, was it in 1905, when you went to the tax office?

A. Yes, I presume it was. I haven't had any property.

(Testimony of Mrs. Martha E. Hallett.)

Q. Well, what became of the bank and the grain business at that time?

A. It has mostly been dispersed.

Q. How is that?

A. I say the most of it had been dispersed.

Q. What am I to understand by that?

Mr. TANNAHILL.—It had been disbursed, she says.

WITNESS.—Well, to express it more slangily, I guess we have gone through with it and lost it one way and another.

Mr. GORDON.—Q. And when did your husband die?

A. My husband died in the winter of '93,—in holiday time, between '93 and '94.

Q. 1903, you mean? [1418—1088]

Q. The reason I asked that question is, I have been reading here in your examination at final proof that you said that you had had your money about a year, and that you had obtained it from your husband's estate.

A. Now, I can explain that. I had money out in notes. I had a large note in Portland, Oregon, and that estate had been in the courts for many years, and I had only got my money from that.

Q. And you didn't pay taxes at that time, and you never have paid any taxes on this timber claim; is that correct? A. On which?

Q. On the timber claim.

A. I think one year there was taxes paid.

Q. Who paid them?

(Testimony of Mrs. Martha E. Hallett.)

A. I was in Spokane at Mr. Kester's, and I got a notice of taxes to be paid—or you know, a tax notice—and I have never paid taxes on my claim, and he was coming to Lewiston, and I says, “Will you go to the courthouse and look to that for me?” and he says, “I will, Mrs. Hallett,” and I am not sure whether he paid the taxes that year or not; I wouldn't say that he did or say that he didn't. I asked him to go up and see after it for me, but this past year I went and looked at it and I have been away so long that I guess they thought I wasn't a resident of Idaho, and this past year I didn't pay any taxes.

Q. You didn't say anything to Mr. Kester at the time you asked him to pay your taxes about having an exemption?

A. Yes, I did; I says “I have been exempt, but I have got my notice, and I am afraid there is something wrong.” Anyway, I asked him to go and see about it, Mr. Gordon, for me; but whether he had to pay the taxes I have forgotten now.

Q. Do you ever remember of having a certificate of deposit at the Lewiston National Bank?

A. I have had. [1419—1089]

Q. Did you have one in 1904?

A. You know, as I told you, I don't remember.

Q. Do you remember the amount of the certificate of deposit you had there?

A. I have had different ones, so I couldn't tell you.

Q. Well, do you remember how many you have

(Testimony of Mrs. Martha E. Hallett.)

had? A. I don't know.

Q. One, or a dozen?

A. Oh, I couldn't tell you. I have had more than one, certainly.

Q. Do you remember the amount of those certificates? A. No.

Q. You have no idea of what the amount was?

A. No, Mr. Gordon, I haven't.

Q. I show you timber and stone lands sworn statement of Martha E. Hallett, dated April 25th, 1904, and ask you if you signed and filed that paper at the land office the date it bears?

A. I think it is. It looks like it.

Q. I show you the nonmineral affidavit of the same date, signed Martha E. Hallett. Is that your signature? A. Yes, sir.

Q. I show you the testimony of Martha E. Hallett, given on final proof, dated July 15th, 1904, and ask you if that is your signature to that paper?

A. Yes, I think it is.

Q. I show you the cross-examination of Martha E. Hallett given at the final proof, and ask you if that is your signature to that? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Martha E. Hallett, dated April 25th, 1904, the nonmineral affidavit of Martha E. Hallett, the notice for publication, the [1420—1090] testimony of Martha E. Hallett given at the final proof, the cross-examination of Martha E. Hallett taken at the same time, all of which papers have been identified by the witness, the testimony of

(Testimony of Mrs. Martha E. Hallett.)

the witnesses given at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 15th, 1904, a certified copy of the patent issued to Martha E. Hallett, dated December 31st, 1904, all relating to the entry of lots 1, 2, and the east half of the northwest quarter of section 19, township 38 north, range 6 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission in evidence of any of the documents just offered, in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, and they are irrelevant and immaterial. And the defendants further severally object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are matters relating strictly to the final proof, occurring long after the filing of the sworn statement, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, 44H, 44I, 44J, 44K, 44L, and 44M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Hallett, at the time you filed your sworn statement had you any contract or agreement with Mr. Kester, or Mr. Kettenbach, or Mr. Dwyer, or anyone else, that you would sell them this land, or any interest in it? A. No, I didn't.

(Testimony of Mrs. Martha E. Hallett.)

Q. There was no understanding—

A. No understanding.

Q. —or agreement, either express or implied, to that effect, was there? [1421—1091]

A. No understanding at all.

Q. Or had you any such agreement at the time you made final proof? A. No.

Q. Have you ever had any such agreement with anyone? A. No, I never have.

Q. And as I understand it, you have never sold your land? A. I never have.

Q. I understood you to say, Mrs. Hallett, that your money that you paid for this land with was tied up in litigation in Portland for a while? A. Yes.

Q. And that litigation had just been settled about a year before you got the land?

A. Something like that. It was just beginning to come in, Mr. Tannahill, from that estate; it wasn't all paid in at one time.

Q. How much money was there in that estate?

A. The original—do you want me to tell you?

Q. Yes?

A. The original note was a \$10,000.00 note, and it had run until it was perhaps \$16,000.00 or \$17,000.00 at the time—well, yes, at the time it began to be paid in it must have been a good bit more than \$16,000.00.

Q. Who was that note against?

A. A. H. Johnson, of Portland, Oregon. The way it came, he died about three months after my husband, and that threw it in litigation, and William Ladd of the Ladd Bank was executor or adminis-

(Testimony of John H. Little.)

trator of the Johnson Estate.

At this time a recess was taken until two o'clock P. M. [1422—1092]

At two o'clock P. M., on Tuesday, September 6th, 1910, the hearing was resumed.

[Testimony of John H. Little, for Complainant.]

JOHN H. LITTLE, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John H. Little, is it not?

A. Yes, sir.

Q. Mr. Little, where did you reside in March, 1903? A. Lewiston, Idaho.

Q. And how old are you now? A. 31.

Q. And you were 24 at that time, were you?

A. Yes, sir.

Q. Were you married then? A. Yes, sir.

Q. How long had you been married?

A. At that time I think about—in March, 1903?

Q. Yes.

A. I had been married about one year—a little over.

Q. And what was your occupation then?

A. I was a clerk in The Beehive.

Q. That is a store? A. Yes, sir.

Q. A sort of a department store?

A. I was in the clothing department.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

(Testimony of John H. Little.)

A. Yes, sir. [1423—1093]

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in support of bills and actions No. 406 and 407, upon the ground and for the reason that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Q. I show you the timber and stone lands sworn statement of John H. Little, dated March 20, 1903, and ask you if you signed that paper and filed it in the land office on or about the date it bears? A. Yes, sir; that is my signature.

Q. I show you the nonmineral affidavit of John H. Little of the same date, and ask you if you signed and filed that paper? A. I did, sir.

Q. I show you the testimony of John H. Little at the final proof, June 15th, 1903, and ask you if you signed that? A. Yes, sir.

Q. I show you the cross-examination of John H. Little given at final proof, June 15th, 1903. Is that your signature? A. Yes, sir.

Q. Mr. Little, do you know Mr. George H. Kester, one of the defendants in this equity cause which we are trying? A. Yes, sir.

Q. Do you know Mr. William F. Kettenbach, another of the defendants? A. Yes, sir.

Q. And Mr. Clarence W. Robnett?

A. Yes, sir.

Q. Did you ever talk with either or all of these gentlemen prior to making your initial application to enter a claim under the timber and stone act?

(Testimony of John H. Little.)

A. I talked to Mr. Robnett. [1424—1094]

Q. When and where was that conversation?

A. That was in the—the introduction of the conversation was in The Beehive, my place of employment.

Q. Now, who brought up the conversation?

A. Mr. Robnett.

Q. Now, state what he said.

A. He was in soliciting the different members of the force to take up a timber claim, and he came over and asked me if I wanted to take up a claim, and I told him that I couldn't afford to. He told me that that was all right; that he could make arrangements where I could afford to; and I asked him what he meant, and he said, "Well, what time do you get off for lunch?" and I told him, and he said, "I will see you outside," and I saw him out on the sidewalk and we finished the conversation out there, and he told me that he had arranged with a party or parties to advance the money, and I asked him if that wasn't a little dangerous, and he said, "Why, no; everybody in the country is doing that." He says, "I have got so and so," and named over some other parties "that has taken up claims"; and he said, "There are some more going in this afternoon, and," he said, "we would just like to have you go ahead and take up yours this afternoon."

Q. Now, was he to furnish all the money—all the expenses? A. Yes.

Mr. TANNAHILL.—We object to that as leading and suggestive.

(Testimony of John H. Little.)

WITNESS.—Yes, he was to furnish the money; and I told him I couldn't; I didn't have any money even to go up on the trip. He says, "Well, we will fix that all right," and he asked if I would go, and I said yes, and he says, "All right; you go home and get ready and go out on the three o'clock train"—the one that went up through Ahsahka,—and he came down and met me and told me to go into Thatcher & Kling's store, and Arthur Storer and I went in together, and if I remember right Fred. Kling gave me \$15.00. [1425—1095]

Mr. GORDON.—Q. Did you give him a note for it?

A. And he had a note all made out to Curtis Thatcher, \$15.00, and I signed the note, and so did Storer, and we went on up to the timber with Billy Benton and Ed. Knight, and I forget who else was in the party besides Storer and I.

Q. Now, let me ask you right there: Had you had any connection with Mr. Benton or Mr. Knight relative to a timber claim, or any arrangement with them, prior to this?

A. No, none whatever; Robnett arranged all that. I understood that Robnett was a partner in the locating business with them—

Mr. TANNAHILL.—We move to strike out what the witness understood, upon the ground that it is hearsay and a conclusion and not a statement of fact.

Mr. GORDON.—Well, you need not answer, if Mr. Tannahill objects to it.

Q. Did you go to this timber claim?

(Testimony of John H. Little.)

A. Well, we went back up in the mountains, away up the river some place, and stayed all night up to the cabin up there some place, and the next day we went out and plowed around through the snow a little bit, and the boys said "Well," they says, "this is about as far as we need to go."

Q. Who said that?

A. I think it was Knight. He says, "Your claim is number so and so."

Q. Did he tell you how far you were away from your claim?

A. No; he didn't say anything at all.

Q. Well, did you ever know how far you were from the claim?

A. No. He said the snow covered the stakes and he couldn't see the numbers. I asked him if it wasn't necessary to see the corners, and he says, "No," he says, "the snow is on the ground, and we don't have to see those stakes now," he says, "it is impossible." So we [1426—1096] turned around and went back and came on down and came back to Ahsahka that night.

Q. Now, what were you to do with this claim after you took it up? What was your arrangement?

A. Well, the understanding was that Robnett was to find me a buyer for the claim. He guaranteed to sell me the claim—to sell the claim for me.

Q. Did he tell you when he would sell it?

A. Why, he said the chances were favorable for an early sale; in fact, he guaranteed an early sale—a verbal agreement was all.

(Testimony of John H. Little.)

Q. Did he tell you whether or not he had anybody in mind, or was assembling claims?

A. No, not at that time he didn't, not until after we had proved up before he made any statement in regard to assembling claims.

Q. Now, did he tell you how much you were to get out of your claim? This is the first talk you had with him before you filed.

A. Well, when we came back he told me what a valuable claim I had got; I don't remember the amount, but he discussed it, and I felt very jubilant over the fact that I had got a good claim. I had taken his word for it was all.

Q. Now, did you have any money with which to take up a timber claim? A. No, sir.

Q. Of your own? A. No, sir.

Q. And when you came back from the timber region you say you saw Mr. Robnett again?

A. Yes, sir.

Q. Was that before you filed?

A. You mean before I made final proof?

Q. No. Before you made your filing did you see him again? A. Yes, I saw him. [1427—1097]

Q. Where did you see him?

A. I don't remember where I saw him that time before we made the filing.

Q. And do you remember who prepared the filing papers for you? A. I think John Nickerson.

Q. Now, do you know how you happened to go to John Nickerson's office? A. I was taken there.

Q. By whom? A. By Robnett.

(Testimony of John H. Little.)

Q. And did you have a description of this land, or did Robnett have a description?

A. He had the description.

Q. You never did have the description of it?

A. No.

Q. And did you pay Mr. Nickerson any fee at all?

A. No.

Q. And then you went to the land office and filed your sworn statement?

A. Yes, and he went up with us.

Q. And who paid the filing fee?

A. I don't remember now whether he handed me the money or whether he paid it; I don't remember that.

Q. You didn't pay your own money?

A. No, I didn't pay my own money.

Q. Do you remember whether anybody notified you when to make proof? A. Robnett notified me.

Q. Now, state what he said.

A. Well, he told me not to forget the day, and I said, "Well, I don't think I will," and he says, "Well, it is a certain day"—I don't remember now just what it was—and he came in the store the morning [1428—1098] of the day that we was to prove up and told me, "You had better go on over and we will get that thing fixed up."

Q. Where did you go?

A. We went on over and went into the bank.

Q. What part of the bank?

A. Well, we went in the main part, in the main entrance, and he went in behind the cage, and he

(Testimony of John H. Little.)

nodded for me to go on into the Directors' room, and we went on in there, and we had a talk in there, and he told me that—I asked him, even before this I asked him about Curt. Thatcher, if I would go to Curt. and get the money, and he says, “No; Curt. is unable to go through with this thing, but I fixed it with some other parties,” and he says, “they will take care of you all right.” So we went back in the bank and we had a talk there in regard to how the thing would go, and so he says, “You go on in the bank and I will draw the money for you,” and he went in and told—if I remember right it was Mr. Kester, to give me I think it was \$560.00, and—a little less than that, but the amount with what he had advanced me brought it up to \$560.00; and so he was standing over to the bookkeeper's window, and just as soon as I got the money he called me over there, and he says, “Now, give me \$125.00 for a location fee.”

Q. Who gave you this \$560.00?

A. George Kester.

Q. Did you give Kester a note for it? A. No.

Q. Did you give anybody a note for it?

A. Not at that time, no; it was later.

Q. Now, was Kester at the window or inside of the bank?

A. Well, he was in his accustomed place. Kester was Cashier, and he gave me the money.

Q. In cash? A. Yes, cash, in bills.

Q. And you went from there over to Robnett's?
[1429—1099]

A. To the bookkeeper's window, and paid him

(Testimony of John H. Little.)

\$125.00 location fee, as he called it.

Q. And then where did you go?

A. Then we went up to the land office.

Q. Now, who is "we"?

A. Well, he came out around there into the Directors' room and out through the door that opens into the stairway, and we went—the land office was upstairs then over the bank—and we went upstairs, and he told Mr. West there that he was ready to—that Mr. Little was ready to make his filing—his final proof, or something of the kind and we completed the proof there, and I paid the money.

Q. Four hundred dollars? A. Whatever it was.

Q. And that was the same money you had got from Kester? A. Yes, that I had got from Kester.

Q. And was there anything said when you were in the bank, or prior to going to the land office to make your proof, about what you should say when you went to the land office relative to where you had received the money?

A. Well, no more than I would expect from a locator instructing me about the methods of going through. I was very green in regard to the matter. He was telling me how it was to be handled.

Q. Now, do you remember when you went to the land office, when you were asked the question where you had gotten the money with which you made final proof or purchased the land, and how long you had had it in your possession, and what you said?

A. No, I don't remember. I know he told me—he had told me something in regard to try to show where

(Testimony of John H. Little.)

I was earning the money myself, and I asked him if it wasn't rather dangerous, and he said, "Oh, no; no, that thing is done every day."

Q. Do you remember this question being asked you: No. 17—this is cross-examination at final proof— [1430—1100]

Mr. TANNAHILL.—The defendants severally object to any evidence in relation to the giving of final proof, or questions that were asked at final proof, on the ground that it is irrelevant, incompetent and immaterial; and let this objection go to all questions in relation to the final proof.

Mr. GORDON.—Q. "Question. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I made it by selling property. Two months." Do you remember that?

A. No, I don't remember that part now.

Q. Well, if you made that answer that wasn't exactly in accordance with the facts, was it?

A. No, it wasn't.

Q. Then they gave you a final receipt when you paid that money in the land office, did they?

A. Yes, sir.

Q. And what did you do with that?

A. Robnett took it.

Q. And did you give a note that day, or later?

A. Yes, that day. He didn't let me get away till we went downstairs, and then he told me about the \$200.00 bonus.

Q. And you gave a note for how much?

(Testimony of John H. Little.)

A. Seven hundred and sixty dollars.

Q. Do you know to whom that note ran?

A. No, I don't remember.

Q. Do you know where the note is?

A. No, I haven't got it.

Q. And you delivered it to Robnett, though?

A. I delivered it to Robnett.

Q. Do you remember reading the note over?

A. Yes; that's where I found the joker about the \$200.00 bonus; [1431—1101] that's the first time I knew it.

Q. Do you remember who the payee in that note was? A. No, I don't remember.

Q. You don't remember to whom the note was payable? A. No, I don't.

Q. And you also gave a mortgage that day?

A. Well, that's what I am speaking of.

Q. Well, didn't you sign a note and a mortgage also?

A. Well, I can't say. I don't remember that.

Q. Have you your property now—that claim now, Mr. Little? A. No, sir.

Q. And to whom did you sell it?

A. Billy Kettenbach. That is, he was going to foreclose on the mortgage, and I told him I thought I had ought to have something out of it, and I got \$30.00.

Q. Who gave you that? A. Billy Kettenbach.

Q. Well, did you have a talk with him before you turned the property over to him, and tell him about your conversation with Robnett?

(Testimony of John H. Little.)

A. Yes, sir, and he told me he had nothing to do with what Robnett may have had to say in regard to that, because Robnett was in with some other interests on a deal of some kind to sell the timber, and they had been unsuccessful; the timber market was dead; and he couldn't wait any longer, he said, he had to have his money secured.

Q. And you made a deed to William F. Kettenbach? A. Yes, sir.

Q. And is that the only deed you ever made of the property?

A. Yes, sir. I say that I made a deed to William F. Kettenbach—I don't know; I don't remember how the thing was worded at all; I just remember signing a paper of some kind and getting the money.

Q. He is the man you transacted the business with?

A. At that time, yes. [1432—1102]

Q. And you made only the one deed?

A. That is the only business I had with Billy in regard to the matter.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of John H. Little, dated March 20th, 1903, the nonmineral affidavit of John H. Little of the same date, the notice for publication, the testimony of John H. Little at the final proof, and the cross-examination of John H. Little, taken at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 15th, 1903, a certi-

(Testimony of John H. Little.)

fied copy of said receiver's receipt, dated June 15th, 1903, and recorded in the office of the Recorder of Shoshone County, June 20th, 1903, at the request of W. F. Kettenbach, a certified copy of a mortgage made and executed by John H. Little and wife Edna F., June 15th, 1903, conveying to Clarence W. Robnett lot 1, and the west half of the northwest quarter and the southeast quarter of the northeast quarter of section 25, in township 39 north, of range 3 east, Boise meridian, to secure a note made by John H. Little June 15th, 1903, in the sum of \$760.00, payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month, said mortgage being acknowledged June 15th, 1903, before John E. Nickerson, a Notary Public, and recorded in the office of the Recorder of Nez Perce County, Idaho, at the request of William F. Kettenbach, June 20th, 1903. We also offer a certified copy of the patent issued to John H. Little, dated the 3d of August, 1904. We also offer in evidence a certified copy of a deed made and executed by John H. Little and wife Edna F., conveying to William F. Kettenbach, in consideration of one dollar, lot 1 and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, in township 39 north, of range 3 east, Boise meridian, acknowledged October 24th, 1904, before H. K. Barnett, a Notary Public, and recorded at the request of W. F. Kettenbach in the [1433—1103] office of the Recorder of Shoshone County, Idaho, October 27th, 1904; all of said land

(Testimony of John H. Little.)

office papers and said patent relating to the entry of lot 1, and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, township 39 north, of range 3 east, Boise meridian.

MR. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to each and all thereof, in support of bills No. 406 and 407, upon the ground and for the reason that the entry is not involved in these two particular actions, and that they are irrelevant and immaterial. And the defendants further severally object to the admission in evidence of any of the final proof papers in support of either of the actions, upon the ground that they are matters relating to the final proof, and occurring long after the filing of the sworn statement, and are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 45, 45A, 45B, 45C, 45D, 45E, 45F, 45G, 45H, 45I, 45J, 45K, 45L, 45M, 45N, 45O, 45P, and 45Q.

MR. GORDON.—Q. I will ask you, Mr. Little, whether you would have taken up this timber claim if it had not been for the proposition of Mr. Robnett that he would furnish all the money and guarantee you a sale of it?

A. No, I don't think I would, as I couldn't see where I could have made it.

(Testimony of John H. Little.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Little, how long did you keep your land after you made final proof before you negotiated a sale of it—before you talked of selling it?

A. Well, a short time afterwards I had a talk with Mr. Robnett in regard to it, and reminded him of his promise to dispose of it.

Q. What did he say? [1434—1104]

A. Why, he told me something about having a—forming a pool of the land, and he had included my claim in this pool. He said he knew I was anxious to sell, and he just included it in the pool, and he was going to see, I think, if I remember right, Tommy Brewer; that he had some customers—an Eastern man—on the string that was going to buy some land, and he would tell me more about it when he came back from a trip he was making to Portland; and when Robnett came back why he and I had some—well, a few pretty warm words, in regard to the fact that I thought he was not keeping his promise, and the time was drawing near for this mortgage to be due, and it was serious with me, and I thought I would have to pay for the mortgage or dispose of the timber.

Q. Now, did he say who was in that pool?

A. No, he didn't mention any names.

Q. He never mentioned Kester's and Kettenbach's names?

A. No, he never mentioned their names to me at any time.

(Testimony of John H. Little.)

Q. Now, how long before October 24th, 1904, was it before you talked to Mr. Kettenbach about buying?

A. Well, I talked to him up the street here, right about opposite this next corner, one night—stopped him in his rig, and I talked to him about it, and he said he didn't know anything about it, if I remember correctly; that he wasn't buying any timber; but to go ahead and see Clarence; he said, "Clarence is looking after that thing the best he can." He said he knew he was in some kind of a deal to dispose of some of the claims for the boys.

Q. Well, what boys?

A. Well, the boys around town here that were in that country up there where I was—Storer and myself and Mr. Benton and some others.

Q. Kettenbach told you to try to sell to someone else, didn't he?

A. Yes; he told me to try to sell to someone else. Well, I told him that Robnett claimed that according to our agreement he was to sell my claim for me, it was in the pool, and I couldn't see how I could sell to anyone else as long as it was in that pool. They explained to me [1435—1105] that the land was more valuable—that they could get more out of it—if the land was all together.

Q. Then, your arrangement with Robnett was not carried out? A. No, it was not.

Q. And did you say that Kettenbach told you that he had nothing to do with Robnett's deal, or the sale that Robnett was to make of the land, or something of that sort?

(Testimony of John H. Little.)

A. Well, yes, if I remember correctly. It is all so long ago that the deal nearly all has gone from my mind, except just the main points of the case.

Q. You had no contract or understanding or agreement, either express or implied, with Mr. Kettenbach or Mr. Kester or Mr. Dwyer, to sell them this land, before you filed your sworn statement?

A. No, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. And nothing until more than a year after you made your final proof—October 24th, 1904,—some time about that time?

A. I don't remember the dates at all.

Q. About the time you executed the deed?

A. Yes, sir.

Q. Had you any contract or agreement, express or implied, to sell your land to Clarence Robnett, at the time you made your final proof?

A. Well, yes; I considered it such. He induced me to take up the claim on the promise of disposing of it for me.

Q. He was simply—

A. —guaranteeing the disposal of it.

Q. He was simply going to dispose of it to someone else?

A. Well, he never mentioned any names at all in regard to the matter.

Q. You knew that he wasn't going to buy it himself, did you not?

A. Well, I didn't think he could. I never had

(Testimony of John H. Little.)

that idea of it. [1436—1106]

Q. And the only thing he told you was that he would find a buyer for you for it, after you had proved up on it?

A. Yes. Yes, he guaranteed to find a buyer.

Q. He guaranteed to find a buyer? A. Yes.

Q. But he didn't do that?

A. No, he didn't do it.

Q. And that is the only understanding you had with him regarding it? A. Yes, sir.

Q. And your first arrangements were that this money was to be furnished by Curtis Thatcher?

A. Well, there was no arrangements made, that was my impression, because Curtis Thatcher advanced the first \$15.00 to make the trip up there.

Q. And then, about the time you made your final proof Robnett told you that Curtis couldn't go through with that? A. Yes.

Q. But he had other arrangements made for you to get the money? A. Yes, sir.

Q. And that is the only thing you knew—all that you knew about it?

A. That is all I knew about it, yes. [1437—1107]

Mr. GORDON.—I have a document here that I wish to offer. I offer in evidence a certified copy of the receiver's receipt issued by the land office to Bertsel H. Ferris, dated June 26, 1903, to lot 3 and the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 24, township 39 north, of range 3 east, B. M., recorded at the request of W. F. Kettenbach

July 1, 1903, in the office of the Recorder of Shoshone County, Idaho.

Mr. TANNAHILL.—The defendants waive any further identification of the document, but object to the admission of it in evidence so far as it relates to bills No. 388 and 407, upon the ground that it is immaterial and irrelevant, the entry not being involved in those two cases.

Said document was thereupon marked by the Reporter as Exhibit 46.

[Offer of Original Entry Papers of Hattie Rowland et al.]

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Hattie Rowland, dated April 25, 1904, filed in the land office at Lewiston, Idaho the same date, the nonmineral affidavit of Hattie Rowland, dated and filed the same date, the notice for publication of Hattie Rowland, the affidavit of Hattie Rowland dated April 25, 1904, the affidavit of Hattie Rowland dated July 18, 1904, the testimony of Hattie Rowland given at the final proof July 18, 1904, the cross-examination of Hattie Rowland taken at the final proof, the testimony of the witnesses given at final proof on the entry of Hattie Rowland, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 18, 1904, all being the original files of the United States land office, and relating to the entry of the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, and the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 15, in township 38 north, of range 5 east, B. M. Also, a certified [1438—1108] copy of the patent to said described land, is-

sued to Hattie Rowland, and dated December 31, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all thereof, insofar as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants further severally object to the admission of any of the final papers in evidence in support of either of the actions, on the ground that they are irrelevant and immaterial; also, the two affidavits filed at the time of making final proof.

Said documents were thereupon marked by the Reporter as Exhibits 47, 47A, 47B, 47C, 47D, 47E, 47F, 47G, 47H, 47I, 47J, 47K, 47L, 47M, 47N, and 47-O.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, relative to the timber and stone entry of William B. Benton, which consists of the sworn statement of William B. Benton, dated August 27, 1902, the notice for publication, the nonmineral affidavit of William B. Benton, dated August 27, 1902, the testimony of William B. Benton given at the final proof, November 21, 1902, the cross-examination of William B. Benton, taken at the same time, the testimony of the witnesses at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated November 21, 1902, all relating to the entry of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 15, in

township 39 north, of range 3 east, B. M. Also, a certified copy of the patent issued to William B. Benton for said last described tract of land, and [1439—1109] dated the 5th day of February, 1904. We also offer a certified copy of a deed made and executed the — day of January, 1912, by William B. Benton, conveying to C. W. Robnett the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 15, township 39 north, of range 3 east, B. M., acknowledged before Otto Kettenbach, a Notary Public for Nez Perce County, January 10, 1903, and recorded in the office of the Recorder of Shoshone County, Idaho, April 27, 1903, at the request of the Shoshone Abstract Company.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all of the documents so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H, 48I, 48J, 48K, 48L, 48M, and 48N.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Benjamin F. Bashor, which consists of the timber and stone lands sworn statement of Benjamin F. Bashor, dated

March 21, 1903, the nonmineral affidavit of Benjamin F. Bashor, of the same date, the notice for publication, the testimony of Benjamin F. Bashor at the final proof, dated June 17, 1903, the cross-examination of Benjamin F. Bashor at final proof, of the same date, the testimony of the witnesses at final proof, [1440—1110] and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17, 1903, all relating to the entry of lot 4 and the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 24, in township 39 north, of range 3 east, B. M. Also, a certified copy of the patent to said last described tract of land, issued to Benjamin F. Bashor, and dated August 3, 1904, We also offer a certified copy of the receiver's receipt issued to Benjamin F. Bashor June 17, 1903, in payment of the tract of land last-described, and recorded in the office of the Recorder of Shoshone County, Idaho, June 20, 1903, at the request of W. F. Kettenbach. We also offer a certified copy of a mortgage made and executed by Benjamin F. Bashor and wife Emma C., dated June 17, 1903, conveying to Clarence W. Robnett the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of section 24, township 39 north, of range 3 east, B. M., to secure a promissory note dated June 17, 1903, in the sum of \$550.00, executed by B. F. Bashor, and payable to the order of Clarence W. Robnett in one year, with interest at the rate of one per cent per month. Said mortgage is acknowledged before John E. Nickerson, a notary public for Nez Perce County, June 17, 1903, and recorded at the request of W. F. Kettenbach June 20, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the admission of either thereof in evidence in support of bills Nos. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants further object to the admission in evidence of any of the final proof papers in evidence, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 49, 49A, 49B, 49C, 49D, 49E, 49F, 49G, 49H, 49I, 49J, 49K, 49L, 49M, 49N, and 49-O. [1441—1111]

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Pearl Washburn, consisting of the timber and stone lands sworn statement of Pearl Washburn, dated January 19, 1903, the notice for publication, the nonmineral affidavit of Pearl Washburn, dated January 19, 1903, the testimony of Pearl Washburn given at final proof, dated April 16, 1903, the affidavit of Pearl Washburn of the same date, the cross-examination of Pearl Washburn given at final proof, April 16, 1903, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated April 16, 1903, all relating to the entry of the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 27, in township 40 north, of range 4 east, B. M. Also, a certified copy of the patent to said last-described

tract of land, issued to Pearl Washburn, and dated the 2d day of July, 1904, We also offer a certified copy of the said receiver's receipt, issued to Pearl Washburn April 16, 1903, for the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 27, in township 40 north, of range 4 east, B. M., recorded in the office of the Recorder of Shoshone County, Idaho, at the request of W. F. Kettenbach, April 18, 1903. We also offer a certified copy of a mortgage made and executed by Pearl Washburn and Charles O. Washburn, her husband, April 16, 1903, conveying to W. F. Kettenbach the property last hereinbefore described, to secure a promissory note of even date to William F. Kettenbach, in the sum of \$400.00, which said mortgage was recorded at the request of W. F. Kettenbach April 18, 1903, in the office of the Recorder of Shoshone County.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any of the papers in evidence in support of bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants further object to the [1442—1112] admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 50, 50A, 50B, 50C, 50D, 50E, 50F, 50G, 50H, 50I, 50J, 50K, 50L, 50M, 50N, 50-O, and 50P.

Mr. GORDON.—We offer in evidence the original

files of the United States land office at Lewiston, Idaho, of the timber and stone entry of James C. Evans, consisting of the timber and stone lands sworn statement of James C. Evans, dated March 24, 1903, the nonmineral affidavit of James C. Evans, dated April 24, 1903, the affidavit of James C. Evans, dated June 17, 1903, the testimony of James C. Evans given at the final proof, dated June 17, 1903, the cross-examination of James C. Evans at final proof, of the same date, the notice for publication, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17, 1903, all relating to the entry of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 25, in township 39 north, of range 3 east, B. M. Also, a certified copy of the patent to said last described tract of land, issued to James C. Evans, dated August 3, 1904. We also offer a certified copy of the receiver's receipt issued to James C. Evans June 17, 1903, and recorded in the office of the Recorder of Shoshone County, at the request of George H. Kester, August 10, 1903. We also offer a certified copy of a deed made and executed by James C. Evans June 17, 1903, conveying to William F. Kettenbach and George H. Kester the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of section 25, township 39 north, of range 3 east, B. M., which was acknowledged before H. K. Barnett, a notary public for Nez [1443—1113] Perce County, Idaho, June 17, 1903, and recorded in the office of the Recorder of Shoshone County, Idaho, at the request of George H. Kester,

August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all of the documents in so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence, upon the ground that the same are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 51, 51A, 51B, 51C, 51D, 51E, 51F, 51G, 51H, 51I, 51J, 51K, 51L, 51M, 51N, 51-O, 51P, and 51Q.

Mr. GORDON.—We also offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of George Morrison, consisting of the timber and stone lands sworn statement of George Morrison, dated March 30, 1903, the nonmineral affidavit of George Morrison, dated March 30, 1903, the notice for publication, the testimony of George Morrison given at the final proof, dated June 26, 1903, the cross-examination of George Morrison given at the final proof, of the same date, the testimony of the witnesses given at the final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 26, 1903, all relating to the entry of the NE. $\frac{1}{4}$ of section 22, in township 39 north, of range 3 east, B. M. We also offer a certified copy of the patent for the last described tract of land, issued to George Morrison, and dated August 3, 1904. We also offer

a certified copy of the receiver's receipt issued to George Morrison June 26, 1903, and recorded in the office [1444—1114] of the Recorder for Shoshone County August 10, 1903, at the request of George H. Kester. We also offer a certified copy of a deed made and executed by George Morrison and Mary A. Morrison, his wife, June 26, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of one dollar, the NE. $\frac{1}{4}$ of section 22, in township 39 north, of range 3 east, B. M., acknowledged before John E. Nickerson, a notary public of Nez Perce County, on the same date, and recorded at the request of George H. Kester in the office of the Recorder of Shoshone County August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of each thereof in evidence, in so far as they relate to bills 388 and 407, upon the ground that the entry is not involved in either of these actions, and irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence, in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 52, 52A, 52B, 52C, 52D, 52E, 52F, 52G, 52H, 52I, 52J, 52K, 52L, 52M, 52N, and 52-O.

Mr. GORDON.—We offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Edward M.

Hyde, consisting of the timber and stone lands sworn statement of Edward M. Hyde, dated March 30, 1903, the notice for publication, the nonmineral affidavit of Edward M. Hyde, dated March 30, 1903, the testimony of Edward M. Hyde given on final proof, dated June 26, 1903, the cross-examination of Edward M. Hyde at final proof, at the same [1445—1115] date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 26, 1903, all relating to the entry of the NW. $\frac{1}{4}$ of section 22, township 39 north, of range 3 east, B. M. Also, a certified copy of the patent for said last described tract of land, issued to Edward M. Hyde, dated August 3, 1904. We also offer in evidence a certified copy of the receiver's receipt issued to Edward M. Hyde, dated June 26, 1903, and recorded at the request of George H. Kester in the office of the Recorder of Shoshone County August 10, 1903. We also offer in evidence a certified copy of a deed made and executed by Edward M. Hyde and Maud Hyde, his wife, June 26, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of one dollar, the NW. $\frac{1}{4}$ of section 22, township 39 north, of range 3 east, B. M., acknowledged before John E. Nickerson, a notary public of Nez Perce County, on the same date, and recorded in the office of the Recorder of Shoshone County, at the request of George H. Kester, August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the admission of any of said documents in

evidence, in support of bills No. 388 and 407, upon the ground that the entry is not involved in either of the actions, irrelevant and immaterial. And the defendants further severally object to the admission of any of the final proof papers in evidence, in support of either of the actions, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 53, 53A, 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K, 53L, 53M, 53N, and 53-O. [1446—1116]

Mr. GORDON.—We also offer in evidence the original files of the United States land office at Lewiston, Idaho, of the timber and stone entry of Robert O. Waldman, consisting of the timber and stone lands sworn statement of Robert O. Waldman, dated March 6, 1903, the nonmineral affidavit of Robert O. Waldman, of the same date, the notice for publication, the testimony of Robert O. Waldman given at the final proof, May 25, 1903, the cross-examination of Robert O. Waldman at final proof, of the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated May 25, 1903, all relating to the entry of Lots 2, 3, 6, and 7, of section 30, in township 38 north, of range 2 east, B. M. Also a certified copy of the patent to said last described tract of land, issued to Robert O. Waldman, dated August 3, 1904. We also offer in evidence a certified copy of a deed made and executed by Robert O. Waldman and wife Maud M., dated May 26, 1903, conveying to Clarence W. Rob-

nett Lots 2, 3, 6, and 7, of section 30, township 38 north, of range 2 east, B. M., acknowledged before John E. Nickerson, a Notary Public of Nez Perce County, on the same date, and recorded at the request of the Shoshone Abstract Company in the office of the Recorder of Shoshone County, October 2, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each and all thereof, in so far as they relate to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants also severally object to the admission of any of the final proof papers in evidence, in support of either of the actions now pending, upon the ground that they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 54, 54A, 54B, 54C, 54D, 54E, 54F, 54G, 54H, 54I, 54J, 54K, 54L, 54M, 54N, 54-O, and 54P.

An adjournment was thereupon taken until tomorrow at ten A. M. [1447—1117]

At ten o'clock A. M., Wednesday, September 7th, 1910, the hearing was resumed.

[Testimony of E. N. Brown, for Complainant.]

E. N. BROWN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Nathaniel Brown?

(Testimony of E. N. Brown.)

A. Yes, sir.

Q. What is your occupation, Mr. Brown?

A. I have been in the timber business.

Q. Are you connected with any timber company?

A. Yes, sir.

Q. Which one?

A. Clearwater Timber Company.

Q. In what capacity are you connected with it?

A. I have been looking after their business here, the woods part of it.

Q. Are you their resident agent here?

A. Well, not their resident agent, not in this town.

Q. Are you the state agent here?

A. No, I am their agent conducting their business.

Q. Well, you mean that they have an agent here according to the statute under which service of process may be made, you are not that gentleman?

A. No.

Q. But you are their business agent here?

A. Yes, sir.

Q. In the State of Idaho? [1448—1118]

A. Yes, sir.

Q. Do you do the purchasing for the Clearwater Company? A. Yes, sir.

Q. How long have you been engaged in that capacity for the Clearwater Timber Company?

A. Why, it has been eight years, in that capacity.

Q. I will ask you, Mr. Brown, whether or not you ever purchased, on behalf of the Clearwater Timber Company, the timber claim of one Soren Hansen, described as the southeast quarter of section 10, in

(Testimony of E. N. Brown.)

township 39 north of range 3 east, Boise meridian?

A. Yes, sir, I agreed to purchase it.

Q. State what that agreement was and who the dealings were with.

A. My dealings were with William F. Kettenbach.

Q. And when were they begun?

A. Well, sir, I couldn't tell you just exactly the date. It seems as though it was about two years ago, I believe.

Q. Was that deal ever consummated?

A. I don't think it was.

Q. Do you know why it wasn't? A. Yes, sir.

Q. Why?

A. I believe that there was a *lis pendens* filed against the patent.

Q. Against the claim?

A. Yes,—well, against the patent, or whatever it might have been.

Q. What else?

A. He came to me after—he said he had the papers ready for us, and asked me at the time if we would accept a deed of title with a *lis pendens* filed against the patent, or words to that effect, and I asked our attorney about it and he wouldn't accept it. [1449—1119]

Q. Who was your attorney? A. Mr. Babb.

Q. James E. Babb? A. Yes, sir.

Q. Did you ever file a deed conveying that property to the Clearwater Timber Company?

A. No, sir.

Q. Did you ever pay any money for that claim?

(Testimony of E. N. Brown.)

A. No, sir.

Q. Did you or your company ever make any claim of interest in that claim? A. No, sir.

Q. Have you ever paid taxes on it? A. No, sir.

Q. Now, you know that there is a deed of record, do you not, to the Clearwater Timber Company?

A. I do not, Mr. Gordon.

Q. You understand that there is one?

A. Yes, I have understood so.

Q. Now, do you know whether or not the Clearwater Timber Company made a deed reconveying that property to William F. Kettenbach, or someone he suggested? A. I do not.

Q. Didn't he discuss that matter with you?

A. Mr. Kettenbach?

Q. Yes. A. Yes, sir.

Q. Now, what did you do then?

A. I asked our company to make him a quitclaim deed.

Q. How long ago was that? [1450—1120]

A. Why, I think it was about four or five months ago; it was some time this summer, I think, or spring.

Q. Did you receive a reply to that communication from your company? A. Why, I think I did.

Q. Have you that correspondence?

A. I haven't it here; no, sir.

Q. Could you produce it?

A. If I have any I could, yes; we keep a file.

Q. Do you remember whether or not your company advised you that they would make that deed?

A. They advised me that it would be taken up with

(Testimony of E. N. Brown.)

Mr. Babb, our attorney; that is the last advice I had concerning the matter.

Q. Did you take it up with Mr. Babb?

A. I did; I spoke to him about it.

Q. Do you know why the deed was put on record to the Clearwater Timber Company?

A. I do not.

Q. Did you ever have any discussion with anyone else than Mr. William F. Kettenbach relative to the purchase of this timber claim?

A. No, sir, none except with our attorney.

Q. Did you ever talk with Mr. Clarence Robnett about it? A. No, sir.

Q. You had no dealings whatever with Mr. Hansen? A. No, sir.

Q. Mr. Brown, do you know Mr. William Dwyer, the defendant here? A. Yes, sir.

Q. In these cases? A. Yes, sir.

Q. Are you intimately acquainted with him?
[1451—1121]

A. I know him quite well, yes, sir.

Mr. BABB.—If you will excuse me, Mr. Gordon, just one moment before leaving the subject.

Mr. GORDON.—All right.

Mr. BABB.—I could make a statement there about the condition of those negotiations for securing the deed, to put in the record on that if you want it, the deed from Kettenbach to the Clearwater Timber Company.

Mr. GORDON.—I would prefer for you to put it in as a part of your case, Mr. Babb.

(Testimony of E. N. Brown.)

Mr. BABB.—All right.

Mr. GORDON.—I will ask you, on the record, if Mr. Babb will produce the deed from the Clearwater Timber Company to William F. Kettenbach.

Mr. BABB.—I will, if you will allow me to submit a statement at the time as to the terms on which I hold the deed. I can show you a letter of instructions.

Mr. GORDON.—All I want is the deed, so that I will know what the record is, Mr. Babb.

Mr. BABB.—I will produce the deed with the letter of instructions, with the statement that I have never delivered it and never completed my investigations; that is the way the thing stands.

Mr. GORDON.—All right.

Mr. BABB.—I would like to say further, Mr. Gordon, that when Mr. Hansen testified the other day I had no idea that that pertained to this deed; I didn't know when Mr. Hansen was testifying that the deed had any pertinency to his claim. For that reason it was a couple of days before I found that deed, and I looked it up and found the instructions they sent with it. If you want it, I will produce it, but I would like at the same time to offer a statement. I think you wouldn't object to my making an explanation so that it will be clear.

Mr. GORDON.—No, not at that time, no objection at all. [1452—1122]

Q. In the purchases that you make for the Clearwater Timber Company, Mr. Brown, you pick out a piece of property that you feel it would justify you

(Testimony of E. N. Brown.)

in buying for them, and submit that to your attorney, Mr. Babb, to find out whether or not the title is good, and whether you should purchase it, is that correct?

Mr. BABB.—I object to that as immaterial, with reference to the course of business at the present time. I didn't examine the titles at the time these titles that are involved in these cases were acquired, so that the present custom would be immaterial.

Mr. GORDON.—Q. Well, you would submit the proposition to your attorney as to whether or not you could legally purchase these claims, is that correct? A. Yes, sir.

Q. At all times since you have been purchasing?

A. Yes, sir.

Q. Who else has been the attorney that you submitted them to, besides Mr. Babb?

A. Mr. Davies, of Spokane.

Q. Is he an attorney?

A. I don't know whether he was an attorney or not. I was authorized to send all deeds and abstracts to him before we purchased.

Q. Then how were the payments made on these?

A. Whoever was selling the claim was authorized to go to any bank they saw fit and leave their papers, deeds and abstracts, and I would leave a draft there with it on Mr. Davies, when he was in Spokane.

Q. You draw the drafts yourself on Mr. Davies?

A. Yes, sir.

Q. And, as I understood, you did nothing of that kind with this claim to which we refer?

(Testimony of E. N. Brown.)

A. No, sir. [1453—1123]

Q. Now, with reference to the question I asked you about your acquaintance with Mr. Dwyer, has that acquaintance been intimate?

A. I have known him very well for a long time.

Q. And your acquaintance has been social as well as in a business way? A. Principally social.

Q. And you are acquainted with Mr. William F. Kettenbach? A. Yes, sir.

Q. And Mr. George H. Kester? A. Yes, sir.

Q. Do you remember of the time that they were being tried at Moscow on the conspiracy charges?

A. Yes, sir.

Q. And you remember of the occasion of their being convicted, do you not? A. Yes, sir.

Mr. TANNAHILL.—I object to that, and move to strike out the answer as incompetent, irrelevant and immaterial, and object to all evidence along this line, upon the ground that it is immaterial.

Mr. GORDON.—Q. And you also know, do you not, that Mr. Dwyer was convicted at Moscow in the fall of 1906 on a charge of subornation of perjury?

Mr. TANNAHILL.—The same objection.

Mr. BABB.—The same objection, and because there is better evidence.

A. I remember of them being convicted, but I don't remember what year.

Mr. GORDON.—Q. You knew that it was some offense growing out of their land and timber transactions, did you not? A. I presume it was.

Mr. BABB.—The same objection. [1454—1124]

(Testimony of E. N. Brown.)

Mr. GORDON.—Q. And you also know that at the trial that was had in the spring of 1907, at which Mr. Kettenbach and Kester and Dwyer were convicted, that they were also in connection with their timber transactions?

Mr. BABB.—The same objection.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. You knew that at the time, didn't you? A. Yes, sir.

Q. Mr. Brown, did you purchase the timber claims of Joel H. Benton and William B. Benton for the Clearwater Timber Company?

A. I couldn't tell you from those names.

Q. I will read the description of them. The Joel H. Benton claim is the south half of the southwest quarter and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian.

A. I think we own that.

Q. Did you do the purchasing of them?

A. Yes, sir, if it has been purchased.

Q. And the William B. Benton claim is the south half of the northwest quarter and the north half of the southwest quarter of section 15, township 39 north of range 3 east, Boise meridian.

A. Yes, sir, I think we own both of those.

Q. And you purchased them? A. Yes, sir.

Q. The deed was made to the Clearwater Timber Company in September, 1907, by Elizabeth White?

A. Yes, sir.

Q. Do you remember, relative to those transac-

(Testimony of E. N. Brown.)

tions, who you conducted the business with?

A. Yes, sir; I think it was with William F. Kettenbach. [1455—1125]

Q. You negotiated the purchase of them with him?

A. Yes, sir.

Q. Do you remember whether or not those claims were paid for by a draft given by you?

A. They were.

Q. And were the drafts made to Mr. Kettenbach?

A. No, sir; they were made to the Lewiston National Bank; they were drawn on Mr. Davies, of Spokane, at that time.

Q. You knew no one else in the transaction but Mr. William F. Kettenbach? A. No, sir.

Q. Do you remember purchasing the claim of William Haevernick and the claim of Alma Haevernick, to the south half of the southeast quarter of section 23, and the north half of the northeast quarter of section 26, township 37 north of range 2 east, and the southwest quarter of the northeast quarter of section 26, township 37 north of range 2 east?

A. I don't remember any circumstances connected with it, Mr. Gordon.

Q. Well, the deed runs from Frank W. Kettenbach to the Clearwater Timber Company?

A. Yes, sir.

Q. Do you remember having any dealings with him relative to those claims?

A. Yes, sir, with Frank W. Kettenbach.

Q. And you settled up with him for those?

A. Yes, sir.

(Testimony of E. N. Brown.)

Q. Do you remember purchasing the claim known as the Geary Van Artsdalen claim?

A. No, I do not. [1456—1126]

Q. Would you know it better by the description?

A. Why, I might know it, Mr. Gordon.

Q. It was the northeast quarter of section 25, in township 37 north of range 5 east.

A. I think we own that claim.

Q. Do you remember whether you negotiated for that?

A. I don't remember anything about the negotiations for that.

Q. The deed is dated December 2d, 1905.

A. I can't remember.

Q. Do you remember of purchasing the Pearl Washburn claim? A. No, sir.

Q. Would you know that by the description?

A. No, I don't suppose I would, Mr. Gordon. I probably know whether we own it or not.

Mr. BABB.—It was purchased from Chapman.

WITNESS.—Yes, I remember that.

Mr. GORDON.—Q. Do you remember that?

A. Yes, sir.

Q. Through whom did you conduct the negotiations? A. Through the Lewiston National Bank.

Q. Whom did you see in connection with it?

A. Mr. Chapman and Mr. Kettenbach, I believe.

Q. William F. Kettenbach? A. Yes.

Q. Do you remember the Drury M. Gammon claim? A. No, sir.

Mr. GORDON.—I don't guess you do, because

(Testimony of E. N. Brown.)

you haven't that. That is all, Mr. Brown. [1457—1127]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Brown, do you remember, at the time you purchased these two Benton claims through Mr. Kettenbach that was deeded to you by Elizabeth White, do you remember there was some other claims you purchased at the same time?

A. From Mrs. White?

Q. No, you purchased some other claims from other parties that Mr. Kettenbach was handling the entire matter, and you sent a draft to the Lewiston National Bank in payment for all the claims and Mr. Kettenbach disbursed it?

Mr. BABB.—I object to evidence concerning the drafts, because the drafts are better evidence, and I will have them here in a little bit.

A. I don't remember, Mr. Tannahill; I can't recall any claims just now at the same time.

Q. You have no personal recollection of them?

A. No.

Mr. TANNAHILL.—That is all.

By Mr. BABB.—Q. Mr. Brown, I hand you two deeds from Elizabeth White to the Clearwater Timber Company, dated September 4, 1904, and ask you to look at them and state whether those are the purchases from Elizabeth White to which you referred in your direct examination.

A. I believe they are.

Mr. BABB.—I will ask the stenographer to mark

(Testimony of E. N. Brown.)

those for identification.

Said deeds were thereupon marked by the stenographer as Defendants' Ex. "P," for identification, and Defendants' Ex. "Q," for identification. [1458—1128]

Mr. BABB.—Q. I show you two drafts, each dated September 9, 1907, to the order of the Lewiston National Bank, on demand, for the sums respectively of \$1,200.00 and \$1,600.00, each drawn by you on F. J. Davies, Spokane, Washington, and ask you to look at those and state what relation those drafts, if any, have to the purchase evidenced by the deeds which I last showed you?

A. I believe they were made in payment for those deeds.

Mr. BABB.—I will ask the stenographer to mark those for identification.

Said drafts were thereupon marked by the stenographer as Defendants' Ex. "R," for identification, and Defendants' Ex. "S," for identification.

Mr. BABB.—Q. I will ask you to state what, if anything, you had to do with the purchase of those properties conveyed to the company by Elizabeth White, by the deeds which I showed you?

A. What I had to do with the purchase?

Q. Yes.

A. Why, I had,—I purchased them, at an agreed price, and notified Mr. Kettenbach to have the deeds drawn up and the abstracts completed to date, and to place them in the bank, and that I would make a draft on Mr. Davies to accompany the deeds, and

(Testimony of E. N. Brown.)

if he passed upon the title the draft would be paid.

Q. Those drafts which I showed you are the drafts you made? A. I believe they are, yes, sir.

Q. And were the deeds made and the abstracts placed in the bank? A. I presume that they were.

Q. Did those deeds and abstracts go along with the draft to Mr. Davies? A. I presume they did.
[1459—1129]

Q. Who examined the title as to those properties when they were purchased? A. Mr. Davies.

Q. I was not at that time examining titles for the company? A. No, sir.

Q. You knew you were purchasing those claims from Elizabeth White rather than from W. F. Kettenbach, did you not?

A. Yes, sir; I was told that they were Mrs. White's claims.

Q. By whom? A. By Mr. Kettenbach.

Q. You knew the relationship between Mrs. White and Mr. Kettenbach? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. How long had you been living, or were you then living in Nez Perce County?

A. I don't think that I was. What year was that?

Q. That was September, 1907.

A. I don't think I was living here then, was I?

Q. I don't know.

A. Well, I had just come then.

Q. Where had you lived prior to that time?

A. Moscow, Idaho.

Q. Had you ever lived in Nez Perce County?

(Testimony of E. N. Brown.)

A. Before that?

Q. Until you moved down from Moscow?

A. No, sir.

Q. Had you ever done business of any account in Nez Perce County?

A. No; very little directly in this county. We had selected a good deal of timber in this county, but we didn't have much business in Lewiston other than to file selections.

Q. Did you know at the time you made those purchases from [1460—1130] Elizabeth White that she acquired those properties either from Benton, one of them from W. B. Benton, the other from Joel Benton, or that the title passed through C. W. Robnett? A. No, I did not.

Q. Did you examine the abstract of title at all?

A. No, sir.

Q. What was the course of the company's business in acquiring properties with reference to the examination of abstracts at that time?

A. Just as it is now; when the purchase of a piece of timber or land from any person, they are authorized to put their deeds in a bank, wherever they choose, and we have permission to examine them, for our attorney to examine those deeds and abstracts, and if they are returned to us with the attorney's opinion satisfactory, we place them back in the bank and make a draft for the amount on St. Paul.

Q. At that time you had no attorney, as such, making the examination, however, other than Mr. Davies, had you? A. Not that I know of, no, sir.

(Testimony of E. N. Brown.)

Q. Is Mr. Davies an attorney, or simply an experienced real estate man?

A. I couldn't tell you whether he was an experienced real estate man or not; he was passing on those titles, is all I know about him. He was in the timber business himself.

Q. Did you have any written communications with Mr. Davies concerning the acquisition of those properties from Mrs. White that you remember of?

A. I don't remember of any.

Q. Did you ordinarily, in the ordinary course of business, when the drafts went forward?

A. Why, yes, we had more or less correspondence, not as much as you and I have by any means. I would write him from time to time about different things concerning titles that he had returned on account of some error or something of that kind; that is about all. [1461—1131]

Q. Unless he returned them for correction in some particular there were no communications between you? A. No, sir.

Q. The only communication he would receive would be the draft through the bank, and the abstract and the deed? A. Yes, sir.

Q. Had Mr. Davies ever done business in this county and lived here? A. No, sir.

Q. Or in Latah County?

A. No, sir. I believe, though, that he came down here once with me and stayed over a day; that was in 1901.

Q. He was not acquainted with the people through

(Testimony of E. N. Brown.)

this country here? A. No, sir.

Q. Either in Latah County or Nez Perce County, acquainted with the people and what they were doing? A. No, sir.

Q. And you were not, generally, in Nez Perce County, prior to the time you came here to reside?

A. No, sir.

Q. Except in so far as you had business in the east end, and after its annexation to Shoshone county?

A. No, sir.

Q. Do you know whether those drafts that you drew on Mr. Davies were honored there and paid, and the deeds delivered to the company?

A. Yes, I presume they were; I didn't hear any more from them.

Q. You were never called on to honor the draft?

A. No, sir.

Q. Because of its being dishonored?

A. No, sir. [1462—1132]

Q. At that time did you know W. B. Benton and Joel Benton?

A. I knew one Benton, but I couldn't tell you whether it was W. B. or Joel.

Q. Did you know the particulars as to any criminal proceedings in the United States District Court in Idaho, at that time, as to the properties involved, the particular entries involved, of persons who had made the entries?

A. No. No, I don't believe I did; I didn't know any of those people that were involved in that personally, that is, the people that took up the claims.

(Testimony of E. N. Brown.)

I didn't know any of them.

Q. Had you seen any of those indictments?

A. No, sir, not to read them; I never read any of them.

Q. Did you have any knowledge concerning them, other than current rumor?

A. No; that is all. I was away nearly all the time that those trials were going on, the grand jury meetings, and so forth.

Q. Did you know or did you have any information at the time of the purchase of those claims from Mrs. White that they figured in any way in the matters involved in those criminal indictments?

A. No, sir.

Q. I show you a deed from John E. Chapman to the Clearwater Timber Company, dated June 7, 1907, and ask you to state whether that is one of the purchases you referred to in your examination-in-chief.

A. Yes, sir, I believe it is.

Mr. BABB.—I will ask the stenographer to mark this deed for identification.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "T," for identification.

Mr. BABB.—Q. I show you a draft, dated June 7th, 1907, for \$8,650.00, drawn by you in favor of the Lewiston National Bank, on F. J. Davies. State what, if any, relation that draft bore to the deed which I last showed [1463—1133] you.

A. I presume it is in payment of that deed.

Q. I will ask you to state—

A. Yes, that is in payment of that deed.

(Testimony of E. N. Brown.)

Q. I will ask you to state what, if anything, you had to do with the purchase evidenced by that conveyance from Chapman to the Timber Company.

A. I purchased it.

Mr. BABB.—I will ask you to have that marked as a defendants' exhibit for identification.

Said draft was thereupon marked by the stenographer as Defendants' Ex. "U," for identification.

Q. What was the manner of handling that purchase, with reference to—

A. The same as—

Q. The details of closing the deal up?

A. The same as they were before.

Q. That is before,—you refer to the purchases made from Elizabeth White?

A. Well, the same as the testimony I gave before. We agreed on a price, and the deeds were placed in the bank, with instructions to have the abstracts brought down to date, and when they were complete the bank was to send the deeds to Mr. Davies, in Spokane, with a draft for \$8,650.00, and if he passed on the deeds as being satisfactory the draft was to be paid.

Q. Did Mr. Davies make any objection to the Chapman claim as far as you remember?

A. I don't know.

Q. The title was acquired by the company?

A. Yes, sir.

Q. And the draft was paid? A. Yes, sir. [1464—1134]

Q. That you drew? A. Yes, sir.

(Testimony of E. N. Brown.)

Q. Did you examine that abstract of title that was submitted with that deed? A. No, sir.

Q. And went on to Mr. Davies? A. No, sir.

Q. Did you know what the chain of title was, as to who the entryman was, and the subsequent owners?

A. No, sir.

Q. Did you have any information at that time that that property was in any way involved in any criminal proceedings pending in the United States Court, to which reference has been made in the direct examination? A. No, sir.

Q. Did you have any information that the title was involved in any way, such as is alleged in the bill of complaint, by the government in this case?

A. I didn't understand you.

Q. Did you have any information at that time concerning the existence of any charges against the validity of that title, such as are made by the Government in this case? A. No, sir.

Q. Did you have any such information with reference to the Elizabeth White claim? A. No, sir.

Q. I show you a deed from Frank W. Kettenbach and wife to the Clearwater Timber Company, dated the 18th of June, 1907, and ask you to examine that and state whether that is one of the purchases that were referred to in your direct examination.

A. Yes, sir. [1465—1135]

Q. I will ask you to state what, if any, connection you had with that purchase. A. I purchased it.

Q. I will ask you to state, in a general way, how the details of the transaction were conducted on be-

(Testimony of E. N. Brown.)

half of the timber company.

A. Mr. Kettenbach and myself agreed upon a price for this land, and I instructed him to place the deeds, with the abstract complete, in the bank, and when that was done notify me and I would make a draft on Mr. Davies, of Spokane, in payment for the same.

Q. I show you a draft here, dated July 9th, 1907, in favor of Frank W. Kettenbach, drawn by you, in the sum of \$800.00, on Mr. Davies, and ask you if that is the draft you refer to? A. I believe that it is.

Q. Was that draft paid? A. Evidently.

Q. The company acquired the title, did they?

A. Yes, sir.

Mr. BABB.—I will ask the stenographer to mark the deed for identification, and also the draft in favor of Kettenbach.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "V," for identification; and said draft was marked Defendants' Ex. "W," for identification.

Q. Did you examine this abstract of title that was submitted with the deed from Frank W. Kettenbach to the company? A. No, sir.

Q. Were you at that time acquainted with William Haeverníck and Alma Haeverníck?

A. No, not acquainted with them, but I knew of them.

Q. Were you then familiar in any way with what William Haeverníck and Alma Haeverníck were doing? A. No, sir. [1466—1136]

Q. Did you at that time, at the time of the drawing

(Testimony of E. N. Brown.)

and payment of that draft, have any information that the title conveyed by the deed from Frank W. Kettenbach was in any way questioned by the Government of the United States? A. No, sir.

Q. I show you a deed from Geary Van Artsdalen, G-e-a-r-y V-a-n A-r-t-s-d-a-l-e-n, to the Clearwater Timber Company, dated December 2, 1905, and ask you to state if that is the conveyance from Van Artsdalen referred to in your direct examination?

A. I believe it was.

Mr. BABB.—I will ask that that be marked for identification.

Said deed was thereupon marked by the stenographer as Defendants' Ex. "X," for identification.

Q. I will ask you to state what, if anything, you had to do with the purchase from Van Artsdalen evidenced by that deed.

A. I evidently purchased that claim.

Q. In what way was that purchase made, as to details of making and closing up the transaction?

A. I don't remember anything about the details, but if we purchased it, it was done in the regular way; the deeds and abstract were placed in the bank, with instructions to be forwarded to F. J. Davies, at Spokane, for examination, and the draft accompanied the deed.

Q. Did you know Geary Van Artsdalen at that time? A. No, sir.

Q. You came in contact with him in making this purchase? A. No, sir.

Q. Did you have any information at that time that

(Testimony of E. N. Brown.)

the title to the property described in his deed was in any way questioned by the Government of the United States? A. No, sir. [1467—1137]

Q. How much was it that was paid him for that property? A. I don't remember.

Q. Have you got the draft that you drew on Mr. Davies? A. No, sir.

Q. For that purchase? A. No, sir.

Q. Do you know what has become of it?

A. I do not.

Mr. GORDON.—Have you it, Mr. Babb?

Mr. BABB.—No, I haven't that draft; I haven't been able to locate that. I have all the others here.

Q. The title to the Van Artsdalen property was examined by Mr. Davies only, so far as you know?

A. So far as I know.

Q. The Soren Hansen property referred to in your direct examination, there was never any abstract of title to that submitted for examination to the attorney, was there? A. Not to my knowledge.

Q. And that claim, as a claim by itself, was never submitted to the attorney, was it?

A. I couldn't tell you; I don't know.

Q. I will ask you whether you do not remember that the question was simply submitted to the attorney whether titles in that condition or in which *lis pendens* had been filed in an equity suit by the United States Government to set aside title, whether titles in that condition could be purchased under any arrangement satisfactorily?

A. Yes, I had a conversation of that kind with you.

(Testimony of E. N. Brown.)

Q. And that is the conversation referred to in your direct examination, is it not? A. Yes, sir.

Q. And that was not with reference to the Soren Hansen claim, his name was not mentioned, was it?
[1468—1138]

A. No, sir; not to my knowledge.

Q. It was simply a certain number of claims?

A. Yes, sir, any claim.

Q. That might be in that condition?

A. Yes, sir.

Q. You didn't have any conference with me with reference to the purchase from Mrs. White or from Van Artsdalen, or from Chapman, or any of those, with respect to which you testified to your drawing drafts on Davies? A. No, sir.

Q. At that time I was not examining titles for the company? A. No, sir; not to my knowledge.

Mr. BABB.—You asked, Mr. Gordon, about the Gammon property. Does your abstract there show that this is in the Clearwater Timber Company?

Mr. GORDON.—No, I think it shows that it is either in the Idaho Trust Company or the Lewiston National Bank.

Mr. TANNAHILL.—In the Lewiston National Bank.

Mr. GORDON.—It has, since these proceedings, been deeded to the Idaho Trust Company.

Mr. BABB.—Q. Your business for the Clearwater Timber Company has been chiefly the making of purchases in a general way, as you described it?

A. Yes, sir.

(Testimony of E. N. Brown.)

Q. And generally looking after their land?

A. Yes, sir.

Q. After it is acquired? A. Yes, sir.

Q. Tending to the matter of forest fires, and leasing, wherever leases are made, and the payment of taxes, and so forth? A. Yes, sir. [1469—1139]

Q. Although for a few years you haven't had anything to do with the payment of taxes directly?

A. Not any more than they are sent into our offices to be checked over.

Q. The lists are sent there as a matter of routine as they are being made up? A. Yes, sir.

Mr. BABB.—I guess that is all.

Redirect Examination.

(By Mr. GORDON.)

Mr. GORDON.—Have you the deed now that I have asked for, Mr. Babb?

Mr. BABB.—Yes.

Mr. GORDON.—Are you going to offer this deed?

Mr. BABB.—No, not now, alone. I am willing to offer it when I can make a statement to go with it. I will make it now if you wish.

Mr. GORDON.—I wish you would, or I can offer it, and you can make any statement you see fit afterwards, just after I offer it.

Mr. BABB.—Of course, I am not taking testimony here. It might not be competent.

I have a deed, dated July 12, 1910, from the Clearwater Timber Company to W. F. Kettenbach, a quitclaim deed, which was sent to me by the Clearwater Timber Company from St. Paul, with a statement, in

(Testimony of E. N. Brown.)

effect, that they were not advised whether it was proper to deliver this deed, and that they wished me to look into the circumstances, if I was not aware of the circumstances, and find out whether it was proper to deliver it, and to deliver it if I saw fit to do so. I was not aware of the circumstances, and I held the deed for investigation, and am still holding it for that purpose, and have never delivered it. The deed is in words and figures following, to wit: [1470—1140]

THIS INDENTURE made this 12th day of July, 1910, between the Clearwater Timber Company, a corporation created under the laws of the State of Washington, the first party, and W. F. Kettenbach, the second party, WITNESSETH

THAT WHEREAS a conveyance from the second party to first party of the land hereinafter described was placed of record by mistake

NOW THEREFORE in order to clear the title of said second party to said real property, said first party, in consideration of One Dollar (\$1.00) to it in hand paid, receipt of which is hereby acknowledged, hereby quit claims to said second party his heirs and assigns forever any title and interest of said first party acquired by said conveyance from said second party, of, in and to, the Southeast quarter of Section ten (10) Township thirty-nine (39) North, Range Three (3) East of the Boise Meridian, in Nez Perce County, Idaho.

IN WITNESS WHEREOF said first party has caused this instrument to be executed by its Pres-

(Testimony of E. N. Brown.)

ident and Assistant Secretary and its corporate seal to be affixed the day and year first above written.

CLEARWATER TIMBER COMPANY,

By J. A. HUMBIRD,

President.

[Corporate Seal] By W. H. FARNHAM,

Assistant Secretary.

State of Minnesota,

County of Ramsey,—ss.

BE IT REMEMBERED that on this 27 day of July, 1910, before me, the undersigned Notary Public in and for said Ramsey County, personally appeared J. A. Humbird, President, and W. H. Farnham, Assistant Secretary of the Clearwater Timber Company, each known to [1471—1141] me to be the President and Assistant Secretary respectively of said Timber Company, the corporation who executed the foregoing deed, and each of them, and they acknowledged to me that the said corporation executed *and* foregoing deed.

Given under my hand and notarial seal the day and year first above written.

[Notarial Seal] CHARLES W. FARNHAM,
Notary Public, in and for the County of Ramsey,
State of Minnesota.

My commission expires September 25th, 1916.

[Endorsed]: Deed from Clearwater Timber Company to William F. Kettenbach. Dated July 12th, 1910. [1472—1142]

Mr. GORDON.—That is the signature of J. A.

(Testimony of E. N. Brown.)

Humbird, the President of the Clearwater Timber Company?

Mr. BABB.—Yes.

Mr. GORDON.—And it is stipulated that the deed is properly acknowledged, and so forth?

Mr. BABB.—Yes, but not executed, because that implies delivery.

Mr. GORDON.—But it is signed by the President and acknowledged, and you hold it for delivery?

Mr. BABB.—No, not necessarily for delivery. It is for me to determine whether it should be delivered, as the company's attorney, and I came to the conclusion, on hearing the testimony here the other day of Mr. Hansen, that it should not be delivered.

Mr. GORDON.—And this letter, dated July 28th, 1910, addressed to James E. Rabb, signed Clearwater Timber Company, by W. H. Farnham, Assistant Secretary, that accompanied the deed, and has reference to that deed?

Mr. BABB.—Yes. It states in there that he represented that I was aware of the transaction. That, of course, is erroneous. I was not, any more than I had been asked with reference to an uncertain number of claims, not with reference to this particular one, whether they should be purchased while this *lis pendens* was pending.

Mr. GORDON.—I shall offer this letter in evidence, and ask that it be read into the record, and returned to Mr. Babb.

Mr. BABB.—That is all right.

(Testimony of E. N. Brown.)

The above-mentioned letter is as follows:

[1473—1143]

J. A. HUMBIRD,
207 National German-American Bank Bldg.
ST. PAUL, MINN.

July 28th, 1910.

Mr. James E. Babb,
Lewiston,
Idaho.

My dear Sir:—

We are enclosing you a deed from the Clearwater Timber Company to W. F. Kettenbach duly executed by the officers of the company.

This deed as you will note covers or conveys SE. $\frac{1}{4}$ of Sec. 10 Town 39, Range 3 E.

E. N. Brown sends us this deed for execution with an explanation of why it should be so deeded and informs us you are aware of the circumstances leading up to our having the title thereto and why it should be deeded back to Mr. Kettenbach.

We are sending this to you with the request that if the matter is regular and proper you may deliver it to Mr. Brown or if you do not understand the matter you make inquiry and if you are satisfied it is right and proper deliver the deed but if not return to this office with your reasons why it should not be so delivered.

Very truly yours,
CLEARWATER TIMBER COMPANY.

By W. H. FARNHAM,
Asst. Sec'y. [1474—1144]

(Testimony of E. N. Brown.)

Mr. GORDON.—Q. Now, Mr. Brown, the Hansen claim had been submitted to you for purchase, had it?

A. Yes, sir.

Q. And I understood you to say that Mr. Will. Kettenbach had taken that up with you?

A. Yes, sir.

Q. And in going over the matter you found that it was in a *lis pendens*, is that correct?

A. I didn't find that out.

Q. Who found it out for you?

A. Mr. Kettenbach informed me.

Q. And after submitting that matter, together with some others, to your attorney, you declined to purchase it, and as I understood, nothing was paid on it at all, nothing whatever? A. No, sir.

Q. Then, did Mr. Kettenbach ask you to have this deed made that has been offered here?

A. Yes, sir, some time after that.

Q. When did he first ask you about that, do you remember?

A. Why, it was quite a long time after we had talked about the claim; I had forgotten about it.

Q. In fact you didn't know the deed was on record? A. No, sir.

Q. And you didn't put the deed on record?

A. No, sir.

Q. How long ago has it been that he asked you for another deed reconveying the property to him?

A. Well, I believe it was just before they had those bank trials, somewhere along there.

(Testimony of E. N. Brown.)

Q. You mean just before the grand jury proceedings? [1475—1145]

A. I don't remember when it was; it was some time, one day, I think, along about the time they commenced to have their bank trouble, or about that time.

Q. You mean this last spring?

A. No; it must have been—

Q. Last fall?

A. When they had their first bank troubles.

Q. Then you wrote a letter to the President of your company, stating that the deed had been put on record by mistake, is that correct?

A. Well, I don't remember what I said; yes, it must have been put on by mistake. I wrote him that the land didn't belong to us. I don't remember the details about what I did write him about that particular piece of land.

Q. Now, do you know where this deed was prepared?

A. I never saw that deed, Mr. Gordon.

Mr. GORDON.—I read from the letter here that Mr. Babb has—

Mr. BABB.—I prepared that deed, at Mr. Brown's request, Mr. Gordon.

Mr. GORDON.—The letter reads: "E. N. Brown sends us this deed for execution with an explanation of why it should be so deeded and informs us you are aware of the circumstances leading up to our having the title thereto and why it should be deeded back to

(Testimony of E. N. Brown.)

Mr. Kettenbach.” That was practically the effect of your letter?

A. Yes.

Q. Now, I note from reading from the deed which has been read into the record a recital that whereas a conveyance from the second party to first party of the land hereinafter described was placed of record by mistake,” and, as I understand, Mr. Rabb, you say you prepared that deed?

Mr. BABB.—Yes. [1476—1146]

Mr. GORDON.—Q. I assume from that, then, that you conveyed that intelligence to Mr. Babb, that that was a mistake?

A. That we didn’t own the property, never had paid for it.

Q. Do you remember why it was that you were asked to have this land quitclaimed to William F. Kettenbach? Did he say he wanted it quitclaimed to him?

A. Yes; if we weren’t going to pay for it he wanted the claim back.

Q. He wanted it reconveyed to him?

A. I believe so, words to that effect, something of the kind.

Q. In other words, it wasn’t just your own suggestion that it be reconveyed to Mr. Kettenbach?

A. I didn’t know it had been recorded.

Q. But I mean, when you had your talk with Mr. Kettenbach, before giving instructions for this quitclaim deed to be prepared, which was afterwards forwarded to the company, that was done in accord-

(Testimony of E. N. Brown.)

ance with the instructions or request of Mr. Kettenbach, Mr. William F. Kettenbach? A. Yes, sir.

Q. And it was he who told you he wanted it quit-claimed back to him? A. Yes, sir.

Q. Now, you have, or there has been presented to you the drafts with which was purchased all the claims except the Van Artsdalen claim?

A. Yes, sir.

Q. Now, did you deliver those drafts to Mr. Babb?

A. No, sir.

Q. Have you made any search or inquiry for the draft that paid for the Van Artsdalen claim?

A. No, sir.

Q. Now, with whom did you negotiate for the sale of the [1477—1147] Van Artsdalen claim?

A. Well, sir, I don't remember who it was; I never knew—

Q. You say you never met Mr. Van Artsdalen?

A. No, I don't think I ever did. If I did, I didn't know it.

Q. Do you remember whether that transaction was closed at the Lewiston National Bank?

A. I don't think it was; I don't remember.

Q. What makes you think it wasn't closed there?

A. Well, because he,—from conversation only, when this claim came up, this Van Arsdalen name came up, I asked Fitzgerald who he was, and Fitzgerald told me he lived up in the country somewhere; I don't remember what explanation he did make about it, and I told him there had been something filed against it, I don't remember what now.

(Testimony of E. N. Brown.)

Q. Was that a *lis pendens* also?

A. I don't think so; I don't know.

Q. Do you remember what had been filed against it?

A. We had been notified through, that is, from the United States land office, I believe, or somewhere, that these claims had been attacked in some way by the Government, and I don't remember what the details was, but they sent us a list of them; the first list I got out of the newspaper.

Q. Which claims did that refer to,—the claims we have mentioned here this morning?

A. Yes, sir; I think so.

Q. And the first notice you got that there was something wrong with them was some notice from the land office that the Government was attacking them?

A. I believe so; that is, there was something wrong with them,—it was in the newspapers, the claims and the description of them, as belonging to the Clearwater Timber Company; it seems to me there was a [1478—1148] *lis pendens* also filed, and we were notified.

Q. Do you remember in that communication who was the land officer then?

A. I guess Mr. Bartlett.

Q. Mr. Bartlett, the present register of the land office? A. I believe so.

Q. You knew that the deed that had been recorded by error was from Hansen to the Clearwater Timber Company, did you not?

A. Not until after the deed was,—some time after

(Testimony of E. N. Brown.)

the deed was drawn, and I knew it then.

Q. Well, you knew it before the deed had been drawn, before it was recorded? I mean, you had seen the deed before it was recorded, as I understand?

A. No, I never saw the deed, Mr. Gordon. When Mr. Kettenbach asked me to see our attorney relative to taking a deed with a *lis pendens* filed against it, and some other deeds with notices of filing against them, I believe he told me then he got that deed from a man by the name of Hansen, but I never did see the deed.

Q. Did he tell you why he put it on record?

A. No, sir. Well, he has since.

Q. Why, did he tell you?

A. Well, sir, I can't recall just—

Q. See if this doesn't refresh your recollection: Didn't he tell you he sent a deed to Hansen to have him sign it, conveying the property to him, and that Hansen had declined to return the deed, and he put that deed on record to your company for the purpose of protecting himself? A. Not in those words.

Q. Well, wasn't it about that?

A. I couldn't tell you exactly what he said about it, but it was something in connection with Robnett and the deeds, but he told me why in a way, and that is about all I know about it. [1479—1149]

Q. Well, it was to protect himself, to keep the title from getting away; he knew you people would reconvey it when he wanted it?

A. Well, he didn't say much about it.

(Testimony of E. N. Brown.)

Q. Well, wasn't that about what he said?

A. I presume it is, something along the line of what he said, but I don't remember what he said.

Q. And that was just prior to the request being made for this quitclaim deed?

A. No, he didn't talk to me anything about the quitclaim deed at that time at all.

Q. This quitclaim deed was later?

A. Later, yes, sir.

Q. You have no recollection whatever with whom you conducted the negotiations for the Van Artsdalen claim?

A. No, sir, none whatever. I am sure it wasn't Van Artsdalen, but I don't know with whom it was.

Q. Do you know whether it was with Mr. William F. Kettenbach?

A. I don't think it was; I don't remember of any deal of that kind.

Q. Now, is there any way that you know of that the draft given in payment of that could be found?

A. Well, no, I don't know. That draft might have gone in,—that deed could probably have come in with other deeds at the same time, and a draft made for the whole of them, and perhaps it could have been mislaid in some way and wouldn't be recognizable.

Q. With whom did you have negotiations for another purchase of claims in which that would have been included?

A. Well, I don't know. There is a number of people handling claims; there is a great many hand-

(Testimony of E. N. Brown.)

ling them. I don't know who I negotiated with for that claim.

Q. You are sure you didn't pay for the Van Artsdalen claim in cash? [1480—1150]

A. No, never paid for any claims in cash.

Q. At the time that you bought the White claims, you knew at that time of the relation between Mr. William F. Kettenbach and Mrs. White, did you not?

A. Yes, sir.

Q. You knew, and had known for some time, that she was his mother in law, is that correct?

A. Yes, sir, although I had never met Mrs. White at that time.

Q. Did you have any agent authorized to purchase the Van Artsdalen claim for you?

A. No, sir, not unless it was in conversation--

Q. Did you ever put up \$500.00 for an option on that claim, or authorize anybody else to do it?

A. No, sir.

Q. Now, you have referred to the procedure that you had with reference to the purchase of these various claims. As I understand, the custom was that after you had concluded that the land bore sufficient timber, that it would be desirable to own that claim, then you began to look as to the title of it, to inquire as to who you should do business with with reference to the title, is that correct?

A. Not exactly, Mr. Gordon. Usually we never went after a claim to buy it ourselves; it is bad policy.

Q. Somebody came after you?

(Testimony of E. N. Brown.)

A. We let them come to us to sell.

Q. Whoever presented the claim to you, would they furnish you an abstract? A. Yes, sir.

Q. And before you drew the draft there was always an abstract and a deed furnished, is that correct?

A. Well, yes; I would go into a bank with a man—if I was buying a claim from you I would tell you, “Here, which bank do you want to do business with?” Either one you might want to suggest, [1481—1151] “Come in and put your papers and abstracts in here, subject to the examination of our attorney.”

Q. That was always done at the time you put up the draft? A. Yes, sir, usually.

A. Didn't you ever read any of those abstracts yourself, didn't you ever look them over?

A. No, not unless they were returned to us for some reason by the attorney.

Q. But there was an abstract furnished at the time you put the draft up in the bank, wherever you would transact the business? A. Yes.

Q. Now, how far is Moscow from Lewiston?

A. About fifty miles, by railroad.

Q. And it is in the adjoining county to the county Lewiston is in? A. Yes, sir.

Q. Or is it in the same county?

A. In the adjoining county.

Q. How long had you lived at Moscow in 1907, the spring of 1907?

A. Since you recall it, I was living here; I came here to live, I think, in May, 1907.

Q. 1907? A. Yes.

(Testimony of E. N. Brown.)

Q. And for how long prior to that had you lived at Moscow?

A. Why, let's see; well, I came to Moscow in 1894, in June.

Q. Well, that is near enough. And at the trial of any of these persons that we have named here, were you ever present at the courthouse at any of the proceedings?

A. Yes, sir, I was called in there one day to recognize a map.

Q. You were a witness on behalf of the Government at one of those trials? [1482—1152]

A. Yes, sir.

Q. Were you at just one of them, or all three of them? A. Just one.

Q. And that was the trial of the conspiracy case against Kester, Kettenbach and Dwyer?

A. I think that was the second trial.

Q. The last trial they had at Moscow?

A. Yes, sir, I think it was.

Q. And that was what it was called—a fire patrol map, was it? A. Yes, sir.

Q. But you sat around there for a day or two?

A. No; I came up in the morning, got there about ten o'clock, or such a matter, and they used me, and I went back home, back to the woods again.

Q. And that trial was of almost state-wide interest, was it not? A. Yes, people heard generally of it.

Q. You never knew of a trial in the state that was so much talked of as those trials, did you?

A. Well, I didn't hear a great deal of the talk, Mr.

(Testimony of E. N. Brown.)

Gordon; I was in the woods most of the time.

Q. But even people in the woods knew it was going on, didn't they? A. Yes, sir.

Q. Now, wasn't there some objection made by Mr. Davies to the Chapman title, at first?

A. Well, I don't—I couldn't recall that particular title, whether there was or not; there might have been.

Q. See if you can't remember if there wasn't some objection made to it, and you had to take the matter up with Mr. Kettenbach and Mr. Chapman, and then again with Mr. Davies? A. Well, I might have.

Q. Well, don't you remember that that is the fact?

A. I recall something about some part of the deed, but I couldn't [1483—1153] tell you what it was now.

Q. You had an abstract to that too, did you not?

A. The abstract had been sent to Mr. Davies, if there was any trouble about it, and returned to me.

Q. Don't you remember the abstract was returned to you and you had to go to your attorney and discuss the matter with him?

A. Well, I didn't have any attorney here then.

Q. Didn't you have to fix the matter up?

A. No, I don't think I could fix it up. I don't remember much about it. I had no authority to fix up the title. Whoever was selling the claim to us I probably notified of the conditions, and he would be notified himself, because they came back to his bank.

Q. Now, these claims here, these five claims, five or six claims referred to, they are not the only claims that the Kester and Kettenbach people have offered

(Testimony of E. N. Brown.)

to sell you, are they?

A. Well, I couldn't say as to that.

Q. Haven't they put other claims up to you and you declined to buy them? A. They might have.

Q. Don't you remember that they have?

A. They probably have.

Q. And wasn't it for the reason that you were afraid of the titles?

A. Well, I don't know; I don't believe so. We couldn't accept a title, our attorney wouldn't accept it, unless it was good, and usually the case is, when claims are offered for sale, it is because there isn't enough timber on them to afford to pay the price.

Q. Now, you say you knew the Haevernicks?

A. I knew of them.

Q. Did you ever talk with them about the claims that you bought? A. No, sir. [1484—1154]

Q. Do you remember of some suggestion being made that their claims weren't altogether right?

A. No, sir, not until after we were notified—

Q. By the land office?

A. By the land office, I didn't know anything about it.

Q. Now, the tax assessments that they have in this state, will you tell me how they are made up?

A. Whose?

Q. Your assessments here. Don't you make up a list and take it to the tax collector?

A. No; they are made up at St. Paul.

Q. They are made up by the home office?

A. The Assistant Secretary, yes, sir.

(Testimony of E. N. Brown.)

Q. And everything you claim is in that, and that is filed by you here, is that correct?

A. Well, yes; it is sent to us to check over to see if they have left out anything, or put in too much.

Q. And then you file it with the tax collector?

A. Well, I have a lady working for me that tends to that for me; I presume she does.

Q. I mean it is done through your office?

A. Well, I couldn't say whether she files it, or whether Mr. Babb files it.

Q. What I want to get at is the mode; I don't care particularly who files it. But the list is made up at the home office in St. Paul? A. Yes, sir.

Q. And that is sent here to you or to Mr. Davies, which?

A. Well, it is sent to Mr. Babb and to ourselves.

Q. And you all go over it, and if it is correct it is filed by either your attorney or you or somebody in your office? A. I believe it is.

Q. And if it isn't correct, you correct it and file it, is that [1485—1155] correct? A. I believe so.

Q. You say you believe. You know it is so, don't you?

A. Well, I don't know; I haven't had much to do with the taxes the last two or three years, Mr. Gordon. I don't know just exactly. Mr. Babb can enlighten you on that subject.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BABB.)

Q. There is nobody goes over the tax lists now in

(Testimony of E. N. Brown.)

your office except your stenographer, is there?

A. That is all.

Q. I will ask you if you remember, with reference to this Van Artsdalen claim, any connection that Fitzgerald had with it? A. No, I don't recall any.

Q. At this time? A. No, sir.

Q. Was he ever an agent of the Clearwater Timber Company? A. No, sir, not to my knowledge.

Q. If he had anything to do with the purchase of that claim at any time then it was not as agent of the Clearwater Timber Company? A. No, sir.

Q. Do you know whether he had an option on this claim from Van Artsdalen?

A. I couldn't say.

Q. At or near the time the Clearwater Timber company acquired it? A. I couldn't tell you, sir.

Q. It is the case sometimes, is it not, that people do have options other than the persons in whose name the title stands?

A. Very often, I believe. [1486—1156]

Q. You referred in your testimony to receiving a notice at some time from somewhere, you didn't know where, from the land office or from court, somewhere, concerning some defect or alleged defect in these titles? A. Yes, sir.

Q. I will ask you to state whether that was before or after the company had acquired these titles, recorded their deeds, and paid the purchase money.

A. That was after we had acquired the land.

Q. Now, I will ask you if it was not therefore necessarily after the titles to the land had passed

(Testimony of E. N. Brown.)

through the land office and patent had issued, and the Government begun this suit to set aside the patents?

A. Was it what?

Q. If the time you heard of this *lis pendens* was not after the titles had passed through the United States land office, and the patents had issued, and the Government begun this suit to set aside the patents, was it not in fact the notice of this suit to set aside the patents that you saw in this paper?

A. Yes, that is the reason I know it, because the Clearwater Timber Company's name was connected with it.

Q. Made a party defendant? A. Yes, sir.

Q. It was this suit to set aside these patents, was it not? A. I believe it was, yes, sir.

Q. You don't know whether that paper you may have received was issued from the land office and signed by Mr. Bartlett or issued from the United States District Court and signed by the Clerk of the Court, do you? A. No.

Q. At any rate, whether it came from the United States District [1487—1157] Court, or the United States land office, it was after the Clearwater Timber Company had recorded its deeds and paid the purchase price? A. Yes, sir.

Q. Have you made an examination to see whether this Soren Hansen claim is included in the tax lists of the Clearwater Timber Company?

A. No, I have not.

Q. Do you know whether it is or not, actually?

A. I don't know.

(Testimony of E. N. Brown.)

Q. If it should turn out on examination that it is there, would it be right that it should be there, or was it there by mistake?

A. We wouldn't pay the taxes on it.

Q. If you knew it? A. Not if we knew it.

Q. You haven't made any examination of the tax lists or heard of any being made, have you, to find out whether the claim is there or not?

A. No, sir, I haven't the list.

Q. What date was that that you testified in the United States Court at Moscow?

A. Why, I couldn't tell you, Mr. Babb. I think it was in the summertime, or else it was in the fall; I don't know when it was.

Q. All you did was just to produce and identify a file there?

A. That is all. I didn't produce the map; I identified it.

Q. Who had the map there?

A. It might have been me; it was either Fohl or myself that had it there.

Q. That map showed by colorings in a general way the lands held by the different corporations?

A. No, it showed all the land in green that was within the Clearwater Fire Protective Association.
[1488—1158]

Q. It didn't show the individual ownerships?

A. No, sir.

Q. It didn't show what the Clearwater Timber Company had? A. No, sir.

Q. Or Kester and Kettenbach? A. No, sir.

(Testimony of E. N. Brown.)

Q. Or anyone else? A. No, sir.

Q. Is that, in substance, about all you were asked about, just to identify that map?

A. That is all.

Mr. BABB.—I guess that is all.

Redirect Examination.

(By Mr. GORDON.)

Q. I just want to ask one question. Do you remember telling me the other day, in my office, that you or your people never paid any taxes on this Hansen claim? A. I don't believe we ever had.

Q. You stated it more positively than that, didn't you?

A. Well, I don't think we ever paid any taxes on that; I couldn't tell you for certain, but I don't believe we ever paid any taxes on it.

Recross-examination.

(By Mr. BABB.)

Q. It was never your intention to pay any?

A. No, sir.

Mr. BABB.—Of course, since that deed was recorded, it might have by chance been got on. I know about twenty thousand acres that got on up there. That is all.

At this time an adjournment was taken until two o'clock. [1489—1159]

[**Testimony of Mrs. Mabel K. Atkinson, for
Complainant.**]

Mrs. MABEL K. ATKINSON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mabel K. Atkinson?

A. Yes, sir.

Q. Are you a sister of Mr. George K. Kester?

A. Yes, sir.

Q. Mrs. Atkinson, do you remember of taking up a claim under the timber and stone act?

A. Wait until I get my breath.

Q. All right. A. Now, I am ready.

Q. Do you remember of taking up a claim under the timber and stone act? A. Yes, sir.

Q. And do you remember who it was that located you, who was it? A. Mr. Dwyer.

Q. Did you have a relinquishment? Did you purchase a relinquishment?

A. No, not that I know of. I would know it if I did, wouldn't I?

Q. Do you remember whether you went to view this land? A. Yes, sir, I did.

Q. With whom did you go?

A. Why, we all went up in a party.

Q. Who were of the party?

A. I don't remember many; I know my mother and sister and Miss Stevens and Mrs. Sherman,

(Testimony of Mrs. Mabel K. Atkinson.)

and—oh, I don't know; there was others; I don't recall them.

Q. Now, did any one suggest this particular claim to you as being a good claim?

A. No, sir. [1490—1160]

Q. Had you talked with your brother about this?

A. No, sir, I had not. I can tell you just how I came to go if you want me to.

Q. That is what I want to know.

A. I hadn't thought anything about timber claims at all, and one morning I went down to see my mother and sister, and they were preparing to go on claims, and mama wanted me to go along. I hadn't thought anything about it at all, and I got kind of enthused; I thought it would be kind of fun to go on the trip. So I came up town and saw Mr. Dwyer across the street and I hollered over and asked if he had a place for me, and he said, "Get your bonnet," and so I got my bonnet, and that was all there was to it.

Q. Do you remember how much this timber claim cost you? A. How much it cost me? No.

Q. Have you an idea? A. No.

Q. Do you know what the expense was in connection with taking it up? A. No.

Q. Do you remember whether you paid a location fee? A. Yes, sir, I did.

Q. When did you pay that?

A. Oh, I don't know.

Q. When you sold?

A. I don't know, I am sure; I remember of paying it, that is all I know.

(Testimony of Mrs. Mabel K. Atkinson.)

Q. Do you remember how much it was?

A. A hundred dollars, I think, something like that.

Q. Do you remember making your proof in the land office? A. Yes, sir.

Q. Do you remember how much you paid in there?

A. No. [1491—1161]

Q. Do you remember whether you borrowed the money, or used your own money?

A. Oh, I had money of my own.

Q. Where did you get it? Have you an independent income of your own?

A. Why, we are in business.

Q. Were you in business then? A. Yes, sir.

Q. What was the business in 1904?

A. Dentistry.

Q. What was it? A. Dentistry.

Q. You were in business with your husband?

A. Yes, sir.

Q. He is a dentist, is he? A. Yes, sir.

Q. You are not a partner in the business, are you?

A. Well, I guess I can have money once in a while, if there is a little over.

Q. I mean you got it from your husband?

A. Yes, sir. I have my own wages, but if I need more money, why sometimes maybe I can get it.

Q. And you afterwards sold this claim, did you not? A. Yes, sir.

Q. To whom?

A. Why, to Kester and Kettenbach.

Q. With whom did you negotiate the sale, or was that done for you?

(Testimony of Mrs. Mabel K. Atkinson.)

A. No. I did that myself. I just went in and asked to sell it, because I wanted some money.

Q. How much did you get for it? [1492—1162]

A. Twelve hundred; something like that.

Q. Do you remember how long after you made your proof you negotiated the sale?

A. No, sir, I don't.

Q. Have you any idea?

A. No, I haven't any idea.

Q. Do you remember how long before you filed your papers in the land office you had been to view this land? A. No, sir.

Q. Was it the fall before?

A. Was it which?

Q. The fall before the May that you made your entry? A. I couldn't tell you.

Q. Now, when you went from Lewiston to what place did you go, Mrs. Atkinson?

A. To what place did I go?

Q. Yes. When you were going to look at this land, what towns did you go to?

A. Oh, dear me, I don't remember. I went up on the train some place,—Pierce City.

Q. From Pierce where did you go?

A. Out over a trail to Brown's cabin, or something like that.

Q. From Brown's cabin where did you go?

A. We stayed there until we got through. We went out and cruised around and looked over our land and stayed there until we got through, and then came back.

(Testimony of Mrs. Mabel K. Atkinson.)

Q. Did Mr. Dwyer accompany you on this trip?

A. Yes; he went with me a good many times.

Q. You went from here to Pierce City by train, did you? A. Yes, sir.

Mr. GORDON.—That is all. [1493—1163]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You mean you went to Orofino on the train, don't you?

A. I don't know. There wasn't any train to Pierce City at that time. We went on the stage part of the way.

Q. You went on the train to Orofino, did you?

A. Yes, sir. I didn't walk I remember. Yes, I went on the train.

Q. Then, went by conveyance from Orofino to Pierce City? A. I must have.

Q. Then, went out over the trail?

A. Yes, sir.

Q. You stated that you and your husband was in business together. He is a dentist and you are also a dentist, are you not? A. Yes, sir.

Q. And you and he work together?

A. Yes, sir.

Q. Did you have any understanding or agreement with anyone that you would sell your claim to them, before you made your final proof?

A. No, sir, I told you all about that.

Q. And it was some time after you made your final proof before you negotiated a sale of it, was it?

A. Yes, sir. I couldn't just tell; I just needed

(Testimony of Mrs. Mabel K. Atkinson.)

some money and I had that, and I just went after it, that is all.

Q. You are sure that was after you made your final proof? A. Why, yes.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

An adjournment was thereupon taken until two o'clock. [1494—1164]

At two o'clock P. M. the hearing was resumed.

**[Testimony of William F. Kettenbach, for
Complainant.]**

WILLIAM F. KETTENBACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are William F. Kettenbach, one of the defendants in the causes that we are now trying?

A. Yes, sir.

Q. Mr. Kettenbach, are you familiar with the transactions relative to the claim known as the Soren Hansen claim? A. Yes, sir.

Q. I wish you would tell what you know about that claim, and what your connection with it is.

A. Well, it was—I don't just exactly remember the date, but I remember that Robnett (who was then in the bank) spoke to me one day about having a claim for sale.

Q. That is the defendant Robnett?

A. Clarence Robnett; yes. And that he had a deed there in the bank for the claim, all signed up by

(Testimony of William F. Kettenbach.)

this man Hansen, but there was no grantee in it at all. He said that the man was hard up and was owing a mortgage on the claim, and which mortgage they were going to foreclose on him, and he would like to sell it, and he asked me if I couldn't make some disposition of it. And so I told him I would look around and see, and I went to Nat. Brown, of the Clearwater Timber Company, and gave him a description of the claim and asked him if he could make an offer on it, and he said he would look up his estimates and see if he had an estimate on that particular piece of ground, and I think it was a few days after that that he told me what he could pay for it. "Well," [1495—1165] I says, "Brown, it can be had all right, and if you say you will take it why I will get it for you." So he says, "All right," and I had several dealings with Brown along the same lines, and so I went to Robnett and I says, "Well, Nat. Brown will take the claim, and how much does the fellow want for it?" In fact, I think Robnett had told me how much it would take, anyway, before that, to get it. "Well," he says, "Mrs. Thatcher has a mortgage of \$1,000.00 with interest on it, and it will run it up quite a bit, but if they can get the principal they will take the thousand dollars even money." "Well," I says, "all right; I will have Curtis Thatcher come in and pay him the thousand dollars, because I have already an abstract on the claim."

Q. And you paid \$1,000.00 and obtained a relinquishment— A. A release of the mortgage.

Q. A release of the mortgage?

(Testimony of William F. Kettenbach.)

A. And recorded the release of the mortgage.

Q. That was your own money that you paid?

A. That was my own money that I paid, yes, sir. And then I paid over to Robnett, or saw Robnett pay Hansen—I don't know whether I paid any or not to Hansen, but whether I paid Robnett and he paid Hansen I am not sure, but I know Robnett got the money and was to pay Hansen the \$60.00, because I had to pay \$60.00 over and above the mortgage. \$1060.00 was what the claim cost me, plus the abstract.

Q. And you paid the \$60.00; you don't know whether you paid it to Robnett, or whether you paid it to Hansen?

A. Well, I didn't pay it to Hansen; I am pretty sure I paid it to Robnett, and I am under the impression that I saw Robnett pay Hansen at the window.

Q. At the same time? A. At the same time.

Q. Then the deed was made to the Clearwater Timber Company?

A. The Clearwater Timber Company.

Q. And then what happened? [1496—1166]

A. Well, as I was going along with the abstract, I had ordered the abstract made up, and after I had paid the mortgage and paid Robnett to pay Hansen I got the abstract, and then I found that there was a *lis pendens* on the claim, which was a surprise to me. I didn't know anything about that. I figured that the only suits there were were on our own lands, and I ran on to this *lis pendens*. And in the mean-

(Testimony of William F. Kettenbach.)

time Brown had given me a deed, drawn up—they have a separate form of deed, different from anybody else—and he had given me one of their deeds to have him execute, and this deed was executed, and if they was paying all the money and everything the claim was to go to Brown. Of course, I was acting more in the position of a vendor, you might say, but I was paying out my own money and doing all this, and when it was turned over to Brown I was to get my money back. Well, as I say, as soon as I got the abstract I noticed this *lis pendens*, and I went to Brown, and I told him, I says, “Brown, here is a *lis pendens*; I didn’t know it until I got the abstract.” He says, “The claim has never belonged to us, and it must be a mistake that they are suing on that claim,” and I says, “Couldn’t you take it to your attorney and find out?” and he did that; and then, of course, he couldn’t take it.

Q. Then you asked for a deed to yourself?

A. Then I asked for a deed to myself.

Q. And you prepared the deed?

A. I prepared the deed, and gave it to Mr. Robnett.

Q. And that is the deed that was offered here in evidence, wasn’t it?

A. Well, I didn’t know it had been offered in evidence. But the condition was this: It was just about that time, Mr. Gordon, where things got to that stage where this bank trouble came up, the first exposure of the thing, and I had my money tied up in it, and I felt that Robnett was naturally not interested in me any more, or in us, and it seemed apparently he

(Testimony of William F. Kettenbach.)

had not been for quite a while, and I was there with my money out, and nothing to show for it. There was no reason [1497—1167] why Robnett could not have gone to Hansen and got a deed to myself, so I took the matter in my own hands, and on my own volition I took the deed I had used, conveying the land to the Clearwater Timber Company, and put that on record, feeling that I could go to them and that they would quitclaim back to me, and in that way I could protect myself, and that is the reason I did that.

Q. And you understood that they had no interest in the claim at all, and you just put it on record to protect yourself? A. To protect myself.

Q. And in reality—

A. Well, Brown had called the deal off, you see.

Q. In reality the claim was yours?

A. The claim was mine, yes.

Q. You had bought it and paid for it?

A. I had bought it and paid for it, but expected the Clearwater Timber Company to take it, and I thought this thing might drag on indefinitely, I didn't know, and this other proposition came up where I might have got out of it, and I thought I had better protect myself the best I could, and I put it on record.

Q. And so you have paid the taxes on it ever since?

A. Yes, sir.

Q. About this deed which was introduced in evidence here that Mr. Babb brought here, did you ever have that deed?

A. No, sir. I have a copy of the letter which Mr.

(Testimony of William F. Kettenbach.)

Brown wrote to Mr. Babb, saying that from all the knowledge he had of the thing I was entitled to a quitclaim deed, and he had put the matter up to his people and I expected from that letter that I would naturally receive a deed in the course of a short while.

Q. Have you got that letter?

A. No, sir, but it is about like I said, that knowing the conditions as he did, that they should quitclaim the land back to me; that they hadn't bought it, and that I had paid out the money for it.
[1498—1168]

Q. In reality the property is yours?

A. Yes, sir; but I have never seen that deed that Mr. Babb had this morning, and I didn't know how far the matter had progressed in conveying the title to me.

Cross-examination.

(By Mr. TANNAHILL.)

Q. That was your own money that you paid for this claim, was it, Mr. Kettenbach?

A. Yes, sir, that was my own \$1,060.00.

Q. And Hansen got just what he asked for the claim?

A. I presume he did. Robnett was dealing for Hansen. In fact, I took it from Hansen that he would be satisfied if he got clear of any deficiency that there might be on the mortgage. But I paid him \$60.00 over and above the mortgage.

Q. Were you in court when Mr. Hansen testified that he had received the \$60.00?

A. No; I wasn't here when Hansen testified.

(Testimony of William F. Kettenbach.)

Q. But your recollection is that you saw Robnett pay Hansen the money at the time?

A. It is my recollection that I saw Robnett pay Hansen the money right out of the window. But at any rate I will swear that Robnett told me that he was paid.

Q. Did you have any agreement with Mr. Hansen to purchase this claim, before he made final proof on it?

A. No, sir. I didn't know that Hansen owned the claim until Robnett spoke about his having the claim, and that there was a deed in the bank with a place left blank for the grantee, so that Robnett could sell it to anybody, I presume.

Q. Did you have an agreement with Robnett to purchase this land from Mr. Hansen?

A. No, sir.

Q. And you had no agreement or understanding with Mr. [1499—1169] Robnett that he should purchase this land for you, before final proof was made on it? A. No, sir.

Mr. GORDON.—We object to these questions, on the ground that they are not proper cross-examination; that the matter with reference to which he is interrogating the witness was not gone into on examination in chief.

Mr. TANNAHILL.—Q. And the first you knew of it was about the time the land was purchased?

A. Just at that time when Robnett put it up to me that this claim was for sale, and wanted to know if I knew where it could be sold, and I simply interested myself to the extent that I have stated.

(Testimony of William F. Kettenbach.)

Q. Did you have any understanding of any agreement between Robnett and Hansen?

A. Not at all.

Mr. GORDON.—The same objection.

Mr. TANNAHILL.—Did you have any understanding of any agreement existing, before final proof was made, that Robnett should sell the claim for him?

A. I didn't know anything about any agreement between Robnett and Hansen at all.

Mr. GORDON.—It may be understood that the same objection will run to all this?

The SPECIAL EXAMINER.—Yes; the same objection will be noted.

Mr. TANNAHILL.—That's all. [1500—1170]

Mr. GORDON.—I will state that I understood that the deed that was presented and identified by Mr. Babb this morning was offered and read in evidence by him, but in the event that there should be any question about it, I wish to offer the same deed in evidence.

[Stipulation that Certain Instruments were Filed for Record.]

It is stipulated by and between the parties hereto, in open court, that the following instruments were filed for record in the office of the county recorder of Nez Perce County, State of Idaho, and were duly recorded in said office, as follows:

BENJAMIN F. BASHOR, T. & S. No. 4390.

Description: Lot 4, SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. $\frac{1}{2}$, SW. $\frac{1}{4}$,
Sec. 24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BENJAMIN F. BASHOR.

Receiver's Receipt.

Dated June 17, 1903.

Recorded June 20, 1903, Book D-2, p. 161, at request
of W. F. Kettenbach.

BENJAMIN F. BASHOR, and EMMA C.
BASHOR, Wife,

to

CLARENCE W. ROBNETT.

Mortgage: \$500.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before Jno. E. Nicker-
son, N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 448, at request
of W. F. Kettenbach.

Released April 23, 1906, Book 58, p. 294.

[1501—1171]

UNITED STATES

to

BENJAMIN F. BASHOR.

Patent.

Dated August 3, 1904.

Recorded April 13, 1906, Book 38, p. 75, at request
of Lewiston Abstract Company.

Delivered to Lewiston Abstract Company.

1698 *The United States of America*

BENJAMIN F. BASHOR, and EMMA C.
BASHOR, Wife,
to
W. F. KETTENBACH.

Deed.

Consideration, \$900.00.

Dated April —, 1906.

Acknowledged April 17, 1906, before Jesse Peterson,
N. P., Nez Perce County, Idaho.

Recorded April 21, 1906, Book 85, p. 543, at request
of Lewiston National Bank.

Delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.
[1502—1172]

JOSEPH B. CLUTE, T. & S. No. 4393.

Description: SE. $\frac{1}{2}$, NE. $\frac{1}{4}$, E. $\frac{1}{2}$, SE. $\frac{1}{4}$, Sec. 26,
T. 39 N., R. 3 E., B. M

UNITED STATES

to

JOSEPH B. CLUTE.

Receiver's Receipt

Dated June 17, 1903.

Recorded August 10, 1903, Book D-2, p. 185, at re-
quest George H. Kester.

JOSEPH B. CLUTE, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Deed.

Consideration, \$1,000.00.

Dated June 17, 1903.

Acknowledged June 17, 1903, before H. K. Barnett,
N. P., Nez Perce County, Idaho.

Recorded August 10, 1903, Book 83½, p. 269, at re-
quest of George H. Kester.

UNITED STATES

vs.

WILLIAM F. KETTENBACH, et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

THE IDAHO TRUST CO.

Warranty Deed.

Consideration, \$1.00.

Dated July 6, 1907.

Acknowledged July 6, 1907.

Recorded July 10, 1907, at request of C. W. Robnett,
in Book 87, p. 537. [1503—1173]

EDGAR H. DAMMARELL, T. & S. No. 4799.

Description: NE. ¼ of Sec. 19, T. 38 N., R. 6 E., B. M.

1700 *The United States of America*

EDGAR H. DAMMARELL and NELLIE M. DAM-
MARELL,
to
J. O'KEEFE.

Warranty Deed.

Consideration, \$1.00.

Dated July 26, 1905.

Acknowledged July 26, 1904, before Geo. W. Bailey,
N. P., Asotin, Washington.

Recorded January 18, 1906, Book 84, p. 314, at re-
quest Lewiston National Bank, and delivered to
Lewiston National Bank.

J. O'KEEFE and MARY E. O'KEEFE, Wife,
to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Consideration, \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before Geo. W. Bailey,
N. P., Asotin, Washington.

Recorded Jan. 31, 1906, Book 84, p. 361, at request
Lewiston National Bank, and delivered to Lew-
iston National Bank.

Above-described land and other property.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, Wife, GEORGE H. KES-
TER and EDNA P. KESTER, Wife,

to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$2.00.

Dated December 31, 1909.

Recorded Jan. 27, 1910, at 11:10 A. M., at request
Nez Perce County Abstract Co., Book 10 of
Deeds, p. 488, No. 50,677.

Above-described land and other land. [1504—1174]

BERTSEL H. FERRIS, T. & S. No. 4414.

Description: Lot 3, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BERTSEL H. FERRIS.

Receiver's Receipt.

Dated June 26, 1903.

Recorded July 1, 1903, Book D-2, p. 172, at request
W. F. Kettenbach.

BERTSEL H. FERRIS, Single,

to

CLARENCE W. ROBNETT.

Mortgage: \$728.75.

Dated June 26, 1903.

Acknowledged June 26, 1903, before Jno. E. Nick-
erson, N. P., Nez Perce County, Idaho.

Recorded July 1, 1903, in Book 76, p. 456, at request
W. F. Kettenbach.

1702 *The United States of America*

BERTSEL H. FERRIS and MABEL E. FERRIS,
Wife,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1,165.00.

Dated January 16, 1907.

Acknowledged January 16, 1907, before Chas. L. McDonald, N. P., Nez Perce County, Idaho.

Recorded January 18, 1907, Book 86, p. 236, at request Lewiston National Bank, and delivered to Lewiston National Bank. [1505—1175]

UNITED STATES

to

BERTSEL H. FERRIS.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, Book 38, p. 271, at request of C. W. Robnett, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1506—1176]

ELLSWORTH M. HARRINGTON, T. & S. No. 4384.

Description: Lot 1, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

ELLSWORTH M. HARRINGTON.

Receiver's Receipt.

Dated June 15, 1903.

Recorded June 20, 1903, Book D-2, p. 160, at request

W. F. Kettenbach.

ELLSWORTH M. HARRINGTON and ANNA E.

HARRINGTON, Wife,

to

CLARENCE W. ROBNETT.

Mortgage, \$729.75.

Dated June 16, 1903.

Acknowledged June 16, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 446, at request

W. F. Kettenbach.

Released May 16, 1907, Book 58, p. 344.

ELLSWORTH M. HARRINGTON and ANNE E.

HARRINGTON, Wife,

to

W. F. KETTENBACH.

Warranty Deed.

Consideration, \$1,000.00.

Dated May 8, 1906.

Acknowledged May 9, 1906, before C. H. Lingenfelter, N. P., Nez Perce County, Idaho.

Recorded May 12, 1906, Book 81, p. 621, at request

Lewiston National Bank, and delivered to Lewiston National Bank. [1507—1177]

1704 *The United States of America*

UNITED STATES

to

ELLSWORTH M. HARRINGTON.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, Book 38, p. 268, at request C. W. Robnett, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211. [1508—
1178]

FRED. E. JUSTICE, T. & S. No. 4772.

Description: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20, T. 38 N., R. 6 E., B. M.

FRED. E. JUSTICE, Single,

to

W. F. KETTENBACH and GEORGE H. KESTER.

Deed.

Consideration, \$1.00.

Dated July 13, 1904.

Acknowledged July 13, 1904, before Otto Kettenbach, N. P., Nez Perce County, Idaho.

Recorded June 26, 1906, Book 89, p. 194, at request Lewiston National Bank, and delivered to Lewiston National Bank.

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

WILLIAM F. KETTENBACH and MARY JANE
KETTENBACH, His Wife, GEORGE H.
KESTER and EDNA P. KESTER, His Wife,
to

IDAHO TRUST COMPANY, a Corporation.

Warranty Deed.

Consideration, \$2.00.

Dated December 31, 1909.

Recorded Jan. 27, 1910, at 11:10 A. M., in Book 100
of Deeds, p. 488, at request of Nez Perce County
Abstract Company. [1509—1179]

JOHN H. LITTLE, T. & S. No. 4383.

Description: Lot 1, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec.
25, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

JOHN H. LITTLE.

Receiver's Receipt.

Dated June 15, 1903.

Recorded June 20, 1903, Book D-2, p. 160, Nez Perce
County, at request W. F. Kettenbach.

JOHN H. LITTLE and EDNA FIFE LITTLE,
Wife,

to

CLARENCE W. ROBNETT.

1706

The United States of America

Mortgage: \$760.00.

Dated June 15, 1903.

Acknowledged June 15, 1903, before Jno. E. Nickerson, N. P., Nez Perce County, Idaho.

Recorded June 20, 1903, Book 76, p. 447, at request W. F. Kettenbach.

Released Oct. 25, 1904, Book 76, p. 587.

UNITED STATES

to

JOHN H. LITTLE.

Patent.

Dated August 3, 1904.

Recorded Jan. 26, 1907, Book 38, p. 273, at request C. W. Robnett, and delivered to Lewiston National Bank. [1510—1180]

UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

Lis Pendens.

Recorded Oct. 16, 1907, Book 1, p. 211.

JOHN H. LITTLE and EDNA FIFE LITTLE,
Wife,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated October 24, 1904.

Acknowledged October 24, 1904, before H. K. Barnett, N. P., Nez Perce County, Idaho.

Recorded October 27, 1904, Book 91, p. 56, at request of W. F. Kettenbach. [1511—1181]

BENJAMIN F. LONG, T. & S. No. 4397.

Description: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 13, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

BENJAMIN F. LONG.

Receiver's Receipt.

Dated January 18, 1903.

Recorded June 22, 1903, in Book D-2, p. 163, at request of W. F. Kettenbach.

BENJAMIN F. LONG, Single,

to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note of \$728.75.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nickerson, Notary Public for Nez Perce County.

Recorded June 22, 1903, in Book 76, p. 454, at request of W. F. Kettenbach.

Said mortgage is released July 25, 1904, in Book 76, page 564.

BENJAMIN F. LONG, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated July 25, 1904.

Acknowledged July 25, 1904, before D. Needham, a

1708 *The United States of America*

Notary Public of Nez Perce County, Idaho.

Recorded July 27, 1904, in Book 831½, page 588, at
request of W. F. Kettenbach. [1512—1182]

UNITED STATES

to

BENJAMIN F. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, p. 274, at re-
quest of C. W. Robnett.

Said patent returned to the **Lewiston National Bank.**
[1513—1183]

FRANCIS M. LONG, T. & S. No. 4395.

Description: N. ½ SW. ¼, N. ½ SE. ¼, Sec. 13, T.
39 N., R. 3 E., B. M.

UNITED STATES

to

FRANCIS M. LONG.

Receiver's Receipt.

Dated June 18, 1903.

Recorded June 22, 1903, in Book D-2, p. 162, at re-
quest of W. F. Kettenbach.

FRANCIS M. LONG and Wife ANNA E.,
to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note for \$728.75.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded June 22, 1903, in Book 76, p. 452, at request of W. F. Kettenbach.

Released August 9, 1904, in Book 76, p. 565.

FRANCIS M. LONG and Wife ANNIE E.,
to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated August 9, 1904.

Acknowledged August 9, 1904, before D. Needham, a
Notary Public for Nez Perce County, Idaho.

Recorded August 12, 1904, in Book 83½, page 604,
at request of W. F. Kettenbach. [1514—1184]

UNITED STATES

to

FRANCIS M. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, page 270, at
request of C. W. Robnett.

Patent returned to the Lewiston National Bank.
[1515—1185]

JOHN H. LONG, T. & S. No. 4396.

Description: Lot 2, SW. ¼ NE. ¼, S. ½ NW. ¼, Sec.
24, T. 39 N., R. 3 E., B. M.

UNITED STATES

to

JOHN H. LONG.

1710

The United States of America

Receiver's Receipt.

Dated June 18, 1903.

Recorded June 22, 1903, in Book D-2, page 162, at
request of W. F. Kettenbach.

JOHN H. LONG, Single,

to

CLARENCE W. ROBNETT.

Mortgage, to Secure Promissory Note of \$710.00.

Dated June 18, 1903.

Acknowledged June 18, 1903, before John E. Nick-
erson, a Notary Public of Nez Perce County,
Idaho.

Recorded June 22, 1903, in Book 76, page 453, at re-
quest of W. F. Kettenbach.

Released July 21, 1904, in Book 76, page 559. [1516
—1186]

JOHN H. LONG, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated July 21, 1904.

Acknowledged July 21, 1904, before D. Needham, a
Notary Public for Nez Perce County, Idaho.

Recorded July 23, 1904, in Book 83½, page 587, at
request of W. F. Kettenbach.

UNITED STATES

to

JOHN H. LONG.

Patent.

Dated August 3, 1904.

Recorded January 26, 1907, in Book 38, page 269,
at request of C. W. Robnett. [1517—1187]

CARRIE D. MARIS, T. & S. No. 4049.

Description: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,
NE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 13, T. 36 N., R. 5 E., B. M.

UNITED STATES

to

CARRIE D. MARIS.

Receiver's Receipt.

Dated November 21, 1902.

Recorded at request of Shoshone Abstract Company
June 27, 1903, in Book D-2, p. 164.

CARRIE D. MARIS, Single,

to

CLARENCE W. ROBNETT.

Deed.

Consideration, \$1500.00.

Dated June 2, 1903.

Acknowledged June 2, 1903, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of Shoshone Abstract Company
June 27, 1903, in Book 83 $\frac{1}{2}$, page 225. [1518
—1188]

UNITED STATES

to

CARRIE D. MARIS.

Patent.

Dated February 25, 1904.

Recorded at request of Shoshone Abstract Company

May 9, 1906, in Book 38, page 115.

Returned to Lewiston National Bank.

CLARENCE W. ROBNETT and Wife, JENNIE
E.,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Consideration, \$1,000.00.

Dated July 12, 1906.

Acknowledged July 12, 1906, before John D. Mc-
Conkey, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of Lewiston National Bank,
June 27, 1906, in Book 88, page 100.

Returned to Lewiston National Bank. [1519—
1189]

JACKSON O'KEEFE, T. & S. No. 4764.

Description. W. $\frac{1}{2}$ SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
23, T. 38 N., R. 5 E., B. M.

UNITED STATES

to

JACKSON O'KEEFE.

Receiver's Receipt.

Dated July 11, 1904.

Recorded at request of George H. Kester September
2, 1904, in Book D-2, page 278.

JACKSON O'KEEFE, and ETTA, His Wife,
to

LEWISTON NATIONAL BANK, a Corporation.

Mortgage to Secure \$2180.00.

Dated August 27, 1904.

Acknowledged August 29, 1904, before George W.
Bailey, a Notary Public, of Asotin, Washing-
ton.

Recorded at request of George H. Kester September
2, 1904, in Book 76, page 570.

Released July 2, 1907, in Book 59, page 385. [1520
—1190]

JACKSON O'KEEFE

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Consideration, \$1500.00.

Dated June 16, 1906.

Acknowledged June 16, 1906, before John E. Nick-
erson, a Notary Public for Nez Perce County,
Idaho.

Recorded at request of George H. Kester June 19,
1906, in Book 88, page 55.

Returned to Lewiston National Bank.

Patent recorded June 2, 1910. [1521—1191]

WREN PIERCE, T. & S. No. 4389.

Description: SE. $\frac{1}{4}$, Sec. 22, T. 39 N., R. #3 E.,
B. M.

1714 *The United States of America*

UNITED STATES

to

WREN PIERCE.

Receiver's Receipt.

Dated June 17, 1903.

Recorded at request of W. F. Kettenbach, June 20,
1903, in Book D-2, p. 161.

WREN PIERCE and MAY PIERCE, Wife,
to

CLARENCE W. ROBNETT.

Mortgage, to Secure Note of \$728.75.

Dated June 17, 1903.

Acknowledged June 17, 1903, before John E. Nick-
erson, N. P., Nez Perce County, Idaho.

Recorded at request of W. F. Kettenbach, June 20,
1903, in Book 76, p. 449.

Released June 1, 1904, in Book 76, p. 546. [1522—
1192]

WREN PIERCE and MAY PIERCE, His Wife,
to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated May 31, 1904.

Acknowledged May 31, 1904, before John H. Shildts,
a Notary Public for Nez Perce County, Idaho.

Recorded at request of W. F. Kettenbach June 3,
1904, in Book 83½, p. 546.

UNITED STATES

to

WREN PIERCE.

Patent.

Dated August 3, 1904.

Recorded at request of C. W. Robnett, January 26, 1907, in Book 38, p. 275.

Returned to Lewiston National Bank. [1523—1193]

JOSEPH H. PRENTICE, T. & S. No. 4766.

Description: Lots 1, 2, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 18, T. 38 N., R. 6 E., B. M.

JOSEPH H. PRENTICE, and EMMA A. PRENTICE, Wife,

to

J. O'KEEFE.

Warranty Deed.

Consideration, \$1.00.

Dated July 25, 1904.

Acknowledged July 26, 1904, before George W.

Bailey, a Notary Public of Asotin, Washington.

Recorded at request of Lewiston National Bank, January 18, 1906, in Book 84, p. 313.

J. O'KEEFE and Wife, MARY E.,

to

W. F. KETTENBACH and GEORGE H. KESTER.

Quitclaim Deed.

Consideration, \$1.00.

Dated July 30, 1904.

Acknowledged July 30, 1904, before George W.

Bailey, a Notary Public, of Asotin, Washington.

1716 *The United States of America*

Recorded at request of Lewiston National Bank

January

July 31, 1906, in Book 84, p. 361.

Returned to Lewiston National Bank.

Patent dated July 31, 1904, and recorded June 2,
1910. [1524—1194]

GEORGE RAY ROBINSON, T. & S. No. 4415.

Description: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 26,

T. 39 N., R. 3 E., B. M.

UNITED STATES

to

GEORGE RAY ROBINSON.

Receiver's Receipt.

Dated June 26, 1903.

Recorded at request of William F. Kettenbach, July
1, 1903, in Book 82, p. 172.

GEORGE RAY ROBINSON, Single,

to

CLARENCE W. ROBNETT.

Mortgage to Secure Note for \$728.75.

Dated June 26, 1903.

Acknowledged June 27, 1903, before John B. An-
derson, a Notary Public for Nez Perce County,
Idaho.

Recorded at the request of W. F. Kettenbach July
1, 1903, in Book 76, p. 457.

GEORGE RAY ROBINSON, Single,

to

WILLIAM F. KETTENBACH.

Deed.

Consideration, \$1.00.

Dated Oct. 16, 1905.

Acknowledged Oct. 16, 1905, before Thomas Mullen,
a Notary Public for Nez Perce County, Idaho.

Recorded at the request of the Lewiston National
Bank, January 6, 1906, in Book 85, p. 201.

Returned to Lewiston National Bank. [1525—
1195]

UNITED STATES

to

GEORGE RAY ROBINSON.

Patent.

Dated August 3, 1904.

Recorded at request of C. W. Robnett, January 26,
1907, in Book 38, p. 272.

Returned to Lewiston National Bank. [1526—
1196]

CHARLES W. TAYLOR, T. & S. No. 4762.

Description: Lots 1, 2, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 30,
T. 38 N., R. 6 E., B. M.

CHARLES W. TAYLOR, Single,

to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Warranty Deed.

Consideration, \$1.00.

Dated July 12, 1904.

Acknowledged July 12, 1904, before George W.
Bailey, a Notary Public, of Asotin County,
Washington.

Recorded at the request of the Lewiston National Bank, January 20, 1906, in Book 84, p. 327.
[1527—1197]

EDGAR J. TAYLOR, T. & S. No. 4765.

Description: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 18, T. 38 N., R. 6 E., B. M.

EDGAR J. TAYLOR, Single,
to

WILLIAM F. KETTENBACH and GEORGE H.
KESTER.

Warranty Deed.

Consideration, \$1.00.

Dated July 12, 1904.

Acknowledged July 12, 1904, before George W. Bailey, a Notary Public of Asotin, Washington.
Recorded at the request of Lewiston National Bank,
January 20, 1906, in Book 84, p. 326.

Returned to Lewiston National Bank.

Patent dated December 31, 1904, and recorded June 2, 1910. [1528—1198]

**[Offer of Deeds from Wm. F. Kettenbach and Wife,
and George H. Kester and Wife, to Idaho Trust
Company.]**

Mr. GORDON.—We offer in evidence a deed made by William F. Kettenbach and wife, and George H. Kester and wife to The Idaho Trust Company, dated July 6, 1907, and recorded at the request of C. W. Robnett, in the office of the recorder of Nez Perce County, Idaho, in Book 87, page 537, and read the same into the record as follows:

“ #33881 WARRANTY DEED.

THIS INDENTURE, Made this 6th day of July, in the year of our Lord One Thousand Nine Hundred and Seven, between William F. Kettenbach and Mary Jane Kettenbach, his wife, and George H. Kester and Edna P. Kester, his wife, of Lewiston, County of Nez Perce, State of Idaho, parties of the first part, and The Idaho Trust Company, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Lewiston, Nez Perce County therein, the party of the second part.

WITNESSETH, That the said parties of the first part for and in consideration of the sum of One Dollar of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell and confirm unto the said party of the second part, and its successors and assigns forever, all the following described real estate, situated in Nez Perce County, State of Idaho, to wit:

North half of North half of Section fourteen (14) Northwest quarter of Southwest quarter of Section fourteen (14) North half of Southeast and Southeast quarter of Northeast quarter of Section fifteen (15); North half of Section twenty-two (22) South half of Southwest quarter, Southeast quarter and South half of Northeast quarter of Section twenty-three (23); South of Northeast quarter and east half of Southeast quarter of Section twenty-six (26) South half of Northwest quarter and West half of

Southwest quarter of Section twenty-five (25) all in Township thirty-nine (39) North Range three (3). East Boise Meridian, [1529—1199] containing 1280 acres, more or less.

Southwest quarter of Northwest quarter, South half of Northeast quarter and Southwest quarter of Southeast quarter of Section nine (9), East half of Northwest quarter, Southwest quarter of Northwest quarter and South half of Southwest quarter of Section twenty-one (21) North half of North half, South half of Northeast quarter, East half of Southeast quarter Southwest quarter of Southeast quarter, and Southwest quarter of Section twenty (20); Northeast quarter, East half of Southeast quarter, Southwest quarter of Southeast quarter, and South half of Southwest quarter of Section twenty-nine (29); North half of North half, Southeast quarter of Northeast quarter of Section thirty-two (32); Northeast quarter of Southeast quarter and Lot numbered Eleven (11) of Section thirty (30); Lot numbered one (1) of Section thirty-one (31) all in Township thirty-nine (39), North Range four (4), East Boise Meridian, Containing 1520 acres, more or less. North half of Southwest quarter, Southwest quarter of Southwest quarter of Section five (5); Northwest quarter of Northwest quarter of Section eight (8); South half of Section seventeen (17); South half of Section nineteen (19); North half of Northeast quarter of Section thirty (30); Northeast quarter and Northeast quarter of Southeast quarter of Section twenty-nine (29); North half of Southwest quarter and Northeast quarter of Section twenty-eight (28);

West half of Northwest quarter of Section twenty-seven (27); all in township thirty-nine (39), North Range five (5) East Boise Meridian, containing 1400 acres, more or less.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion or reversions, remainder or remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well as in law as in equity, of the said parties of the first part. [1530—1200]

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises together with the appurtenances unto the party of the second part and to its successors and assigns forever. And the said parties of the first part, for their heirs, executors, administrators and assigns do covenant and agree to and with the second party that at the time of the ensealing and delivery of this instrument the first parties are lawfully seized of said premises in fee simple absolute. And the said parties of the first part, and their heirs the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals

the day and year above written.

WILLIAM F. KETTENBACH. [Seal]

MARY JANE KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

EDNA P. KESTER. [Seal]

Signed, sealed and delivered in the presence of :

STATE OF IDAHO,

County of Nez Perce,—ss.

On this 6 day of July in the year 1907, before me, Chas. L. McDonald, a Notary Public in and for said County, personally appeared William F. Kettenbach and George H. Kester, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same, and on this 6th day of July, in the year 1907, before me the officer above described, personally appeared Mary Jane Kettenbach and Edna P. Kester, known to me to be the persons whose names are subscribed to the within instrument, described as married women, and upon an examination without [1531—1201] the hearing of their husbands I made them acquainted with the contents of the instrument, and thereupon they acknowledged to me that they executed the same and that they do not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] CHAS. L. McDONALD,
Notary Public in and for Nez Perce County, Idaho.

Filed for record July 10th A. D. 1907 at 12:15 o'clock P. M. Request of C. W. Robnett.

W. L. GIFFORD,

Recorder.

By C. L. Swormstedt,

Deputy.

Fees \$2.75."

Mr. TANNAHILL.—The defendants severally waive any further identification of the deed offered.

Mr. GORDON.—We offer in evidence a deed made by William F. Kettenbach and Mary Jane Kettenbach, his wife, and George H. Kester and Edna P. Kester, his wife, to the Idaho Trust Company, a corporation, dated December 31, 1909, and recorded at the request of the Nez Perce County Abstract Company, in the office of the recorder of Nez Perce County, Idaho, in Book 100, page 488, and read the same into the record, as follows:

"#50677 WARRANT DEED.

THIS INDENTURE, Made this 31st day of December in the year of our Lord One Thousand Nine Hundred Nine, Between William F. Kettenbach and Mary Jane Kettenbach, his wife, of the City of Lewiston, Nez Perce County, State of Idaho; and George H. Kester and Edna P. Kester, his wife, of Spirit Lake, Kootenai County, Idaho, the parties of the first part, to The Idaho Trust Company, a corporation under the [1532—1202] laws of Idaho, doing business in the City of Lewiston, County of Nez Perce, State of Idaho, the party of the second part.

WITNESSETH, That the said parties of the

first part, for and in consideration of the sum of Two (\$2.00) Dollars, Gold Coin of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to their successors and assigns forever, all the following described real estate, situated in Nez Perce County, State of Idaho, to-wit:

The Northeast quarter of the Northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section eight (Sec. 8) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Northwest quarter of the Northeast quarter (NW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section nine (Sec. 9) of Township forty (40) North of Range five (5) E., B. M., containing one hundred and sixty (160) acres, and the Northeast quarter (NE. $\frac{1}{4}$) of Section twenty-four (24) of Township thirty-eight (38) North of Range Two (2) E., B. M., containing one hundred and sixty acres, and the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the West half of the Southeast quarter (W. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section two (Sec. 2) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section eleven (Sec. 11) and the East half of the Northeast quarter (E. $\frac{1}{2}$ NE. $\frac{1}{4}$) of Section ten (Sec. 10) and the Southwest quarter of the Northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) and the Northeast quarter of the Southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section thirty-three (Sec. 33), and the

East half of the Southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the Southwest quarter of the Southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section thirty-five (Sec. 35) and the Southeast quarter of the Southeast quarter (SE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section thirty-four (Sec. 34) all in Township thirty-eight (38) North of Range four (4) E., B. M., containing Six hundred (600) acres, and the West half of the Southeast quarter (W. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section six (Sec. 6) and the Southeast quarter of the [1533—1203] Southwest quarter (SE. $\frac{1}{4}$ SW. $\frac{1}{4}$) and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section five (Sec. 5) and the Northwest quarter (NW. $\frac{1}{4}$) of Section four (Sec. 4) and the West half of the Northwest quarter (W. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Northeast quarter of the Southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section eight (Sec. 8) and the Northeast quarter of the Southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section nine (Sec. 9) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section seven (Sec. 7) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section eighteen (Sec. 18) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section fifteen (Sec. 15) and the Northwest quarter (NW. $\frac{1}{4}$) of Section twenty (Sec. 20) and the Northeast quarter of Section twenty-four (Sec. 24), and the East half of the Southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$), and the Northwest quarter of the Southwest quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$), and the Southeast quarter (SE. $\frac{1}{4}$) of Section twenty-three (Sec. 23) and the North half of the Northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$)

and the Southeast quarter of the Northeast quarter (SE. $\frac{1}{4}$ N.E. $\frac{1}{4}$) of Section twenty-six (Sec. 26) and the Northeast quarter (NE. $\frac{1}{4}$) and the Southeast quarter (SE. $\frac{1}{4}$) and West half of the Southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section twenty-five (Sec. 25) all in township thirty-eight (38) North of range five E., B. M., containing Eighteen Hundred and Eighty (1880) acres, and the North half of the Southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section eight (Sec. 8) and the North half of the Southwest quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$) of Section nine (Sec. 9), and the Northwest quarter (NW. $\frac{1}{4}$) and the Southwest quarter (SW. $\frac{1}{4}$) of Section eighteen (Sec. 18) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) of Section seventeen (Sec. 17) and the North half of the Northwest quarter (N. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the North half of the Northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the South half of the Southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the South half of the Southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section fifteen (Sec. 15) and the Southeast quarter of the Southwest quarter (SE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section thirteen (Sec. 13) [1534—1204] and the Southeast quarter (SE. $\frac{1}{4}$) and the Northeast quarter (NE. $\frac{1}{4}$) of Section nineteen (Sec. 19) and the East half of the Northeast quarter (E. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the East half of the Southeast quarter (E. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section twenty (Sec. 20) and the Northeast quarter (NE. $\frac{1}{4}$) and the Northwest quarter (NW. $\frac{1}{4}$) of Section thirty (Sec. 30) and the Northeast quarter (NE. $\frac{1}{4}$) and the Northwest quarter (NW. $\frac{1}{4}$) of Section twenty-nine (Sec. 29) and the Northeast

quarter (NE. $\frac{1}{4}$) and the East half of the Northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the Southwest quarter of the Northwest quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section twenty-four (Sec. 24) all in township thirty-eight (38) North of Range six (6) E., B. M., containing twenty-three hundred and twenty (2320) acres.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well in law as in equity of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular the above-mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever, and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part, and their heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals,

the day and year first above written. [1535—1205]

WILLIAM F. KETTENBACH. [Seal]

MARY JANE KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

EDNA P. KESTER. [Seal]

Witness:

E. V. KLEIN.

J. W. PANTELL.

STATE OF IDAHO,

County of Nez Perce,—ss.

On this 14th day of January in the year 1910 before me May C. Hyke a Notary Public in and for said County, personally appeared William F. Kettenbach and Mary Jane Kettenbach, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and they acknowledged severally to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RAY C. HYKE,

Notary Public in and for said Nez Perce County,
State of Idaho.

[Ray C. Hyke, Notary Public, Nez Perce County,
Idaho.]

STATE OF WASHINGTON,

County of Spokane,—ss.

On this 13 day of January in the year 1910 before me E. V. Klein a Notary Public in and for said state of Washington, residing at Spokane in Spokane County, State of Washington, personally appeared George H. Kester and Edna P. Kester, his wife

known to me to be the persons whose names are subscribed to the foregoing instrument and they acknowledged severally to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] E. V. KLEIN,
Notary Public in and for the State of Washington,
Residing at Spokane, [1536—1206] in Spokane County therein.

Filed for record Jan. 27th, A. D. 1910, at 11:10 o'clock A. M. Request of Nez Perce Co. Abst. Co.
Fees \$2.80.

W. L. GIFFORD,
Recorder.
By R. L. Thompson,
Deputy."

Mr. TANNAHILL.—The defendants severally waive any further identification of the deed offered.
[Offer of Deed from Lewiston National Bank to Idaho Trust Company.]

Mr. GORDON.—We offer in evidence a deed made by the Lewiston National Bank, a corporation under the laws of the United States, to the Idaho Trust Company, a corporation under the laws of Idaho, dated January 8, 1910, and recorded January 12, 1910, at the request of the Idaho Trust Company, in the office of the recorder of Nez Perce County, Idaho, in Book 103, page 101, and read the same into the record, as follows:

“No. 50,297.

THIS INDENTURE, Made this eight day of January in the year of our Lord one thousand nine hundred and ten between Lewiston National Bank, a corporation under the laws of the United States, of Lewiston, County of Nez Perce, State of Idaho, the party of the first part, and Idaho Trust Company, a corporation under the laws of Idaho, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollars, gold coin of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors, heirs and assigns, forever, all the following described real estate situated in Nez Perce County, State of Idaho, to wit:

Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) [1537—1207] in Block Three (3), lots ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), in Block thirteen (13), lots seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12) in Block Fifteen (15) and Lots five (5), six (6), seven (7), eight (8) and nine (9) in Block Sixteen (16) of Nez Perce addition to the City of Lewiston, Idaho, according to the recorded plat thereof, and

The southwest quarter (SW. $\frac{1}{4}$) of Section ten

(10), in Township thirty-nine (39), North of Range Three (3) East of Boise Meridian, in Idaho, containing One hundred sixty acres (160), and

The Southeast quarter (SE. $\frac{1}{4}$) of the Southeast quarter (SE. $\frac{1}{4}$) of Section twenty-six (26) the Southwest quarter (SW. $\frac{1}{4}$) of the Southwest quarter (SW. $\frac{1}{4}$) of Section twenty-five (25) and the North half (N. $\frac{1}{2}$) of the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-five (35) in Township forty (40) North of Range three (3) East of Boise Meridian, in Idaho, containing one hundred and sixty acres (160) and

The Lots numbered two (2), three (3), six (6) and seven (7) of Section Thirty (30) in Township thirty-eight (38) North of Range two (2) East of Boise Meridian, in Idaho containing one hundred and fifty acres and forty hundredths of an acre (150 40/100) and

The lots numbered five (5) and eight (8) and the East half of the Southwest quarter (SW. $\frac{1}{4}$) of Section thirty (30) in Township thirty-eight (38) North of Range two (2), East of Boise Meridian, in Idaho, containing one hundred and sixty acres (160) and

Lots Four (4) and Five (5) in Block Forty-four (44) and Lot Eight (8) in Block Forty-seven (47) in the Town of Nez Perce, according to the recorded plat thereof and

One half interest in Lot Three (3), Section seven (7), Township Thirty-five (35) North of Range five (5) West of the Boise Meridian, and West half (W. $\frac{1}{2}$) of the Southeast quarter (SE. $\frac{1}{4}$) and [1538—1208] the Northeast quarter (NE. $\frac{1}{4}$) of

the Southeast quarter (SE. $\frac{1}{4}$) of Section twelve (12) Township Thirty-five (35) North, of Range six (6), West of the Boise Meridian.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part:

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Lewiston National Bank has caused its corporate name to be signed hereto by its President and Cashier respectively and its corporate seal affixed the day and year first above written.

LEWISTON NATIONAL BANK.

By FRANK W. KETTENBACH,

President.

By EDWARD C. SMITH,

Cashier.

Signed, sealed and delivered in the presence of

_____.

_____.

[Lewiston National Bank, Idaho.]

STATE OF IDAHO,
County of Nez Perce,—ss.

On this eight day of January in the year 1910, before me, Ray C. Hyke, a Notary Public personally appeared Frank W. Kettenbach and Edward C. Smith known to me to be the President and Cashier respectively of the corporation that executed the instrument and acknowledged to me that such corporation ——— the same. [1539—1209]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.
[Ray C. Hyke, Notary Public, Nez Perce County,
Idaho.]

Filed for record at the request of Idaho Trust Co. this 12th day of January, 1910, at 12:05 o'clock P. M.

W. L. GIFFORD,
County Recorder.
By R. L. Thompson,
Deputy.

Fees, \$1.60.”

ff

Mr. TANNAHILL.—The defendants severally waive any further identification of the deed offered.

At this time an adjournment was taken until Thursday, September 8th, 1910, at ten o'clock A. M.
[1540—1210]

On Thursday, September 8th, 1910, at ten o'clock, A. M., the hearing was resumed.

By agreement of counsel, an adjournment was thereupon taken until ten o'clock A. M., Friday, September 9th, 1910. [1541—1211]

On Friday, the 9th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

Mr. GORDON.—We offer in evidence a certified copy of Notice of Lis Pendens, entitled *The United States of America, Complainant, vs. William F. Kettenbach and Others, Defendants*, filed for record and recorded in the office of the Recorder of Latah County, Idaho, September 7th, 1909, at 11 o'clock A. M., at the request of Peyton Gordon, and read the same into the record.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document.

Said document is as follows:

[Exhibit 54Q.]

Instrument Number 51,164.

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, CLARENCE W. ROBNETT,
WILLIAM DWYER, THE IDAHO
TRUST COMPANY, THE LEWISTON
NATIONAL BANK OF LEWISTON, IDA-
HO, THE CLEARWATER TIMBER COM-
PANY, THE WESTERN LAND COM-
PANY, GEORGE E. THOMPSON, ELIZA-

BETH W. THATCHER, CURTIS
THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KET-
TENBACH, MARTHA E. HALLETT, KIT-
TIE E. DWYER, POTLATCH LUMBER
COMPANY, ROBERT O. WALDMAN,
Defendants.

Notice of Lis Pendens.

Notice is hereby given that a suit in equity has been commenced, in the above-named court, by the above-named complainant, against the above-named defendants, which suit is now pending; that the object of [1542—1212] said suit is to vacate, annul, set aside and cancel certain United States patents, heretofore issued by the United States of America at the instance and by the procurement of the defendants William F. Kettenbach, George H. Kester, Clarence W. Robnett and William Dwyer, to the following named persons, and for the lands described and set out, after and opposite the name of each person respectively:

ROWLAND A. LAMBDIN: The southwest quarter of section twenty-nine, in township forty-two north of range one west, Boise meridian.

IVAN R. CORNELL: Lots six and seven, and the east half of the southwest quarter of section twenty-seven, in township forty north of range one west, Boise meridian.

FRED W. SHAEFFER: The east half of the northwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section twenty-seven, in town-

ship forty north of range one west, Boise meridian.

All of said lands being in the Lewiston, Idaho Land District, and in Latah County, in the State and District of Idaho.

GEORGE W. WICKERSHAM,
Attorney General of the United States, Solicitor for
Complainant.

Dated September 7th, 1909.

Filed for record September 7th, 1909, at 11:00
o'clock A. M. Request of Peyton Gordon.

Fee, \$.60.

AXEL P. RAMSTEDT,
Recorder.

State of Idaho,
County of Latah,—ss.

I, Axel P. Ramstedt, Ex-Officio Auditor and Recorder, in and for said county and State, do hereby certify that the above and [1543—1213] foregoing is a full, true and correct copy of Notice of Lis Pendens, The United States of America vs. William F. Kettenbach et al., as the same appears on record in my office at page 86, volume 2 of Pendency of Action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Moscow, Idaho, this 7th day of Sept., A. D. 1910.

AXEL P. RAMSTEDT,
Ex-Officio Auditor and Recorder.

By Adrian Nelson,
Deputy.

[Seal of Auditor and Recorder of Latah County,
Idaho]

(Said certified copy of *Lis Pendens* was marked by the Reporter as Exhibit 54Q.) [1544—1214]

[Testimony of Joseph Alexander, for Complainant.]

JOSEPH ALEXANDER, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph Alexander?

A. Yes, sir.

Q. What is your business, Mr. Alexander?

A. I am in the general merchandise business.

Q. And you reside at Lewiston, Idaho?

A. I have resided at Lewiston, Idaho, since 1864.

Q. And you have been engaged in business—?

A. Ever since.

Q. Ever since then? A. Yes, sir.

Q. Are you in any way connected, or were you in any way connected with the Lewiston National Bank? A. Yes, sir.

Q. In what capacity?

A. I was director and vice-president.

Q. When were you vice-president?

A. I have been vice-president ever since it has been in existence.

Q. And you are vice-president at present?

A. Yes, sir.

Q. How long have you been a director of the Lewiston National Bank?

A. I have been a director,—I couldn't exactly tell the years, but a number of years.

(Testimony of Joseph Alexander.)

Q. Well, I mean were you a director in 1900?

A. Yes, sir.

Q. And are you one of the directors now?

A. Yes, sir.

Q. You have been a director—? [1545—1215]

A. Always.

Q. Do you know Mr. William F. Kettenbach?

A. Yes, sir.

Q. Were you a director and vice-president of the bank during the whole term of his presidency of the bank?

A. Yes, sir.

Q. Do you know Mr. George H. Kester?

A. I know George H. Kester.

Q. Were you vice-president and a director during all the period that he was cashier of the Lewiston National Bank?

A. I think I was.

Q. Do you know William Dwyer?

A. I know William Dwyer; yes, sir.

Q. And you know Clarence W. Robnett?

A. Yes, sir.

Q. During the period that Mr. William F. Kettenbach was president and Mr. George H. Kester was the cashier of the Lewiston National Bank by whom was the bank managed?

A. Well, they both worked together whenever I was in the bank.

Q. Sir?

A. Mr. Kettenbach and Kester worked together.

Q. And they had practically the management of the affairs of the bank?

A. Yes, sir, they had the management of the busi-

(Testimony of Joseph Alexander.)

ness. I have never worked—

Q. Now, were you vice-president when Mr. Frank W. Kettenbach was made the president?

A. Yes, sir.

Q. And you served with him, as vice-president, until he retired from the bank within the last six months? A. Yes, sir. [1546—1216]

Q. After he came into the bank who managed the bank? A. Frank Kettenbach.

Q. He had the sole management of the bank, is that correct? A. Yes, sir.

Q. Do you remember the trials had of William F. Kettenbach and George H. Kester and William Dwyer, in the United States court, at Moscow, in the spring of 1907, at which time they were charged with conspiracy to defraud the United States of its valuable timber lands? Do you remember that trial?

A. Well, I don't know anything about it.

Mr. TANNAHILL.—We object to that on the ground that it is irrelevant and immaterial for any purpose.

Mr. GORDON.—Answer the question, please.

A. All I seen was in the paper.

Q. I mean, you know they were being tried for that offense?

A. I remember, yes; I saw what I saw in the paper.

Q. Well, did you read the paper, did you follow that trial pretty carefully?

A. Well, not carefully.

Q. Well, now, at the time they were being tried

(Testimony of Joseph Alexander.)

Kester was the cashier and William F. Kettenbach was the president of your bank, is that correct?

A. Yes.

Q. And you knew of them being convicted as a result of that trial, did you not?

Mr. TANNAHILL.—Allow us the same objection.

A. Well, I heard them talk about it.

Q. I mean, did you ever talk to Kester and Kettenbach about their conviction?

A. Never a word.

Q. Did you ever speak to them about it?

A. No, sir. [1547—1217]

Q. Were you at the directors' meeting that occurred after they were convicted?

A. I was at the directors' meeting several times.

Q. I mean, after they were convicted at Moscow?

A. Not that I can remember.

Q. Do you remember being at the meeting when they retired from the directorate of the bank and gave up their official positions?

A. I think I can remember it. I don't know the exact time. I don't remember when it was. I was at most every meeting that occurred.

Q. And their conviction was never discussed before the directors of the bank?

A. Oh, it might have been.

Q. Don't you remember it?

A. I can't remember it.

Q. Weren't you there when resolutions were passed at the time they retired from the bank?

Mr. TANNAHILL.—We object to that as imma-

(Testimony of Joseph Alexander.)

terial, and not the best evidence.

A. It is too long back to remember for me.

Mr. GORDON.—Q. It has just been three years ago.

(No answer.)

Q. Do I understand, Mr. Alexander, that you, being vice-president of the bank, and the president of that concern being convicted and sentenced for an offense, and the cashier of that institution being convicted and sentenced for an offense, that you never discussed it with them or they with you?

Mr. TANNAHILL.—We object to that as immaterial.

A. No, not that I remember.

Q. And that the matter was never discussed at any of the directors' [1548—1218] meetings?

A. It might have been discussed and I might not have been there at that time.

Q. They were intimate friends of yours, were they not?

A. Well, not any more than any other good citizen, that is all; it was business qualifications.

Q. You were brought into close contact with them in the affairs of the bank? A. Yes.

Q. Do you know anything about the loans that were made to either Kester, Kettenbach or Mrs. Dwyer relative to timber claims they held?

A. No, sir.

Q. That was left entirely to Mr. Will. Kettenbach and Mr. Kester while they were officers of the bank, was it not?

(Testimony of Joseph Alexander.)

A. Well, I don't know who it was left to, but it was never in question before me.

Q. You knew nothing about it? A. No, sir.

Q. Do you know whether those loans were discussed in the directors' room?

A. Not that I can remember; I don't know anything about it.

Q. They were never discussed while you were present, that you know of? A. Not at all.

Q. Do you remember the sale of the Lewiston National Bank, of its stock, to the Idaho Trust Company? A. Yes, sir.

Q. Now, will you state how that transaction occurred?

A. Well, I know when it came up at the directors' meeting.

Q. Did you have any stock at that time?

A. Well, I had Lewiston National Bank stock.

Q. You had at that time? [1549—1219]

A. Yes, sir.

Q. How many shares?

A. I had one hundred shares.

Q. And how much was it worth, a share?

A. Well, I don't exactly remember.

Q. What was the par value of it?

A. What it was worth at the time? The par value was about two fifteen.

Q. Two fifteen, you say? A. At that time, yes.

Q. Was that two dollars and fifteen cents a share?

A. Yes.

The SPECIAL EXAMINER.—You mean, Mr.

(Testimony of Joseph Alexander.)

Alexander, that was the book value, don't you, in place of the par value? A. Yes, sir.

Mr. GORDON.—Q. What was the par value? One dollar a share? A. About.

Q. Then, did you sell your stock or the greater part of it to the Idaho Trust Company?

A. Well, it was transferred; they merged together at the time.

Q. And you transferred how many of your shares to the Idaho Trust Company?

A. Ninety shares.

Q. And that left you just the requisite amount required by law for you to be a director, is that correct? A. Ten shares; yes, sir.

Q. What did you get in lieu of the stock you transferred to the Idaho Trust Company?

A. I got Idaho Trust Company stock.

Q. An equal number of shares? [1550—1220]

A. Yes, sir.

Q. You transferred ninety shares of stock to the Idaho Trust Company, and they issued ninety shares of the Idaho Trust Company stock to you, is that correct? A. Yes.

Q. Are you a director in the Idaho Trust Company? A. No, sir.

Q. Were you ever a director in the Idaho Trust Company? A. No, sir.

Q. I understood you to say that you read in the papers of the conviction of Mr. William F. Kettenbach and Mr. William Dwyer and Mr. George H. Kester?

A. I don't remember exactly about the conviction,

(Testimony of Joseph Alexander.)

but you know how a person is, when he reads these articles he goes through them, whether it was a conviction or not, but I read the articles, as it came out in the "Tribune," and that is all I know, and I have forgotten them now. I couldn't transfer it or say anything about them, because I don't keep these in my mind, what I read in the newspapers.

Q. Do you have no recollection whether or not these men were convicted or not?

A. (No answer.)

Q. Will you answer the question?

A. I don't remember.

Q. Well, don't you know, as a matter of fact, that that is the reason they resigned from the bank?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. I don't know the cause of it.

Mr. GORDON.—That is all. [1551—1221]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Alexander, you said you read in the newspapers something about their being convicted over at Moscow. Did you also read in the papers about the Circuit Court of Appeals reversing that conviction?

A. Yes, sir.

Q. And did you also read in the papers about their acquittal at Boise, in March, 1910? You read it in the papers?

A. I read the article in the Boise paper.

Mr. TANNAHILL.—That is all.

(Testimony of Joseph Alexander.)

Redirect Examination.

(By Mr. GORDON.)

Q. Then you have a distinct recollection of reading of a reversal of the decision of the conviction of these gentlemen at Moscow, is that correct?

A. Yes.

Q. And still you have no distinct recollection of ever hearing of them being convicted, is that also correct? A. No, I couldn't swear to it.

Q. And you lived right here in Lewiston all the time? A. Yes, sir.

Q. And attended regularly the meetings of the directors of the bank? A. Yes, sir.

Mr. GORDON.—That is all. [1552—1222]

[Testimony of Harvey J. Steffey, for Complainant.]

HARVEY J. STEFFEY, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harvey J. Steffey?

A. Yes, sir.

Q. Where do you reside, Mr. Steffey?

A. Pierce City.

Q. Pierce, Idaho? A. Pierce, Idaho.

Q. And how long have you resided at Pierce?

A. Practically since 1902.

Q. Where did you reside before that time?

A. Spokane, and Lake View, Idaho.

Q. What was your occupation in 1904 and '05 and '06?

(Testimony of Harvey J. Steffey.)

A. I was working in the timber, running a compass and cruising and locating.

Q. Do you know the defendant William F. Kettenbach? A. Yes, sir.

Q. Do you know one of the defendants, George H. Kester? A. Yes, sir.

Q. And do you know one of the defendants, William Dwyer? A. Yes, sir.

Q. How long have you known Mr. William F. Kettenbach? A. I have known him since 1904.

Q. Do you remember when you first met him?

A. Not exactly; no.

Q. As near as you can tell.

A. Some time the latter end of 1904.

Q. And how long have you known Mr. William Dwyer? [1553—1223]

A. About the same length of time.

Q. And Mr. Kester? A. About the same.

Q. Did you ever have any business with Mr. William Dwyer?

Mr. TANNAHILL.—The defendants object to any evidence of the witness relative to any of the transactions regarding timber claims or any of the defendants, in so far as they relate to bills No. 388 and 406, upon the ground that no entry of the witness is involved in either of these particular actions, and no entry that the witness was connected with was involved in either of these particular actions.

A. Yes, sir.

Mr. GORDON.—Q. Now, will you state the first business transactions of any kind that you ever had with Mr. Dwyer?

(Testimony of Harvey J. Steffey.)

A. As near as I can recollect, it was one evening as I was going to Pierce I met Mr. Dwyer on the road, and I spoke to him about getting some money for Miss Lane and her brother to prove up on their timber claims with.

Q. Now, do you remember the approximate date of that? A. No, I do not; I couldn't remember.

Q. Had you ever done any work for him prior to that, or been employed with him or for him or by him in any way? A. No.

Q. Well, now, state what Mr. Dwyer said.

A. Well, after I had stated my business to him, he told me to go and see George Kester at Lewiston.

Q. And did you go to see Kester? A. I did.

Q. What did you tell him?

A. I told him practically what I told Mr. Dwyer at the time.

Q. What did he tell you? [1554—1224]

A. He told me,—he looked the matter up in some papers or books that he had, and told me to tell her at the time she proved up to come around and see him.

Q. Did she go around to see him that you know of?

A. Yes.

Q. Did you go with her? A. No, I did not.

Q. What Mr. and Miss Lane were those, what were their names?

A. Miss Winnie Lane; she lived in Pierce at that time,—and Joe Lane, her brother.

Q. You say he looked up some papers he had in the bank at that time? A. Yes.

Q. Do you know what the papers were?

(Testimony of Harvey J. Steffey.)

A. No, I do not.

Q. Do you know whether they were plats and estimates?

A. I supposed they were plats with reference to these claims.

Q. Now, were you ever employed by Mr. Dwyer in any capacity? A. Yes, sir.

Mr. TANNAHILL.—Mr. Gordon, so that I may know something about this matter, so that I can make a motion if I desire, was this claim he is testifying concerning involved in either of these actions?

Mr. GORDON.—No; I was just leading up to fix a period, that is all.

Mr. TANNAHILL.—The defendants move to strike out all of the witness' evidence relating to the Winnie Lane claim, and conversations in regard to it on the ground that it is irrelevant and immaterial, and not involved in either of these actions.

Mr. GORDON.—Q. Was that before this talk you had with him and Mr. Kester about the Lane claim, or afterwards? [1555—1225]

A. I think it was afterwards.

Q. Now, in what capacity were you employed?

A. Well, running compass and cooking and general timber work.

Q. When was this?

A. I think it was some time in November, 1904, if I am not mistaken.

Q. Well, where were you doing this work, what part of the country?

A. This was in 37-7, where I first went to work for him.

(Testimony of Harvey J. Steffey.)

Q. And how long did you continue working in that community? A. At that time?

Q. Yes.

A. I don't think it was over a week or ten days.

Q. Did you see any of the other defendants, Mr. Kester and Mr. Kettenbach, up in that locality with Mr. Dwyer at that time? A. No, sir.

Q. Did you ever see them up in the woods with him? A. Yes.

Q. How long after this occasion that you have just referred to was that?

A. Oh, it must have been two years afterwards.

Q. Were you doing any work for them?

A. Well, I was with Mr. Kettenbach when he was with Mr. Dwyer at one time.

Q. Where was that?

A. That was—I went out to meet them at Hatch's, and went up on to the North Fork and around through the timber to Pierce.

Q. Do you know what townships you went through? A. Yes, sir.

Q. Will you name them, please?

A. We went through 38-4, 35-5, 37-5, I think that is all.

Q. What were they up there for, what was their mission there? [1556—1226]

A. Well, I understood Mr. Dwyer was showing Mr. Kettenbach the timber they acquired.

Q. And did Mr. Kettenbach say anything about it?

A. Not to me.

Q. I mean in your presence. Did you hear any comment about it?

(Testimony of Harvey J. Steffey.)

A. I understood him to say several times that he was well satisfied with it, that it looked good to him.

Q. Was Mr. Kester up there on any occasion that you know of? A. Not that I was with them, no.

Q. Did you ever see him there?

A. I saw him in Pierce.

Q. Did you ever talk with him in Pierce?

A. No, not in Pierce.

Q. Now, I will ask you whether you and Mr. Kester and Mr. Kettenbach and Mr. Dwyer were ever in on, ever worked together on any timber claims, or had any transactions together concerning timber claims?

A. Mr. Kettenbach never was connected directly with anything that I had to do.

Q. Now, did the other two that you have mentioned? A. Yes.

Q. Well, state the beginning of this connection so far as you can remember it.

A. Well, there was Mr. Kester and Mr. Dwyer and myself at one time were connected with the claim called the Keener claim, in Section 13, 40 and 6 east.

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to the Keener claim, upon the ground that it is not involved in either of these actions, and it is irrelevant and immaterial.

Mr. GORDON.—Q. Now, Mr. Steffey, you remember of having something to do with [1557—1227] what is known as the Myers, the Bonney, the Jolly and the Perkins claims, do you?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. I will ask you whether or not this connection you had with Mr. Dwyer and Mr. Kester in relation to the claim that you mentioned a moment ago was prior to the transaction relative to those last-named claims, the Keener claim?

A. I think it was a short time only.

Q. Now, what was the transaction relative to the Keener claim?

A. Well, the Keener claim was for sale for \$1200.00, and it was a claim that we had no information about, and they asked me what I thought of it, and I told them I knew nothing about it directly, but it was in a good locality and I thought it was worth money, and so they finally concluded to buy it, and pay \$1,200.00 for it, and thought we could sell it for \$3,000.00. So Mr. Kester said that they would cut the profits of \$1,800.00 between us, the three of us, and asked me if I was satisfied, and I told him I was more than satisfied, that I didn't really expect that much, if anything.

Q. Well, that was a claim that had already been entered when you were discussing it, was it not?

A. Yes, sir.

Q. Did you get your share of the profit?

A. I did not.

Q. Now, do you remember the Myers claim?

A. Yes, sir.

Q. Well, now, state the transactions relative to the entry of the Myers claim, and the disposition of it.

A. Well, that was a claim that Mr. Dwyer had contested and won, and he asked me if I had anybody that I could locate on it, or it is possible that I may

(Testimony of Harvey J. Steffey.)

have asked him if he had a claim that I could put somebody on; I have really forgotten. But Mr. Myers,—I told [1558—1228] him I would locate Mr. Myers on it, and I took Mr. Myers out and located him on the claim.

Q. Was there any other conservation before that, was there any discussion as to what you were to do with the claim, what the entryman was to get?

A. Yes.

Q. State what that was.

A. Mr. Myers, I told him—

Q. I mean before you get to Myers. What was your discussion with Dwyer?

A. Well, that is what I was going to say. I told Mr. Dwyer we could get Mr. Myers for about \$150.00, \$100.00 or \$150.00, and he said that was all right, he said I should locate him on it.

Q. Well, did he say that at first, or did he demur a little?

A. No, I think not. He said that was all he could pay.

Q. Do you remember whether or not he said he could get any number of people to locate on that claim for \$100.00?

A. Well, several times he had already told me that, that he could get any number of people for \$100.00 or \$150.00,—\$100.00, I think he said,—that he could get any number of them.

Q. Well, I will ask you whether or not you knew the connection at that time between Dwyer and Kester and Kettenbach with relation to timber claims?

A. Well, I knew that they were working together.

(Testimony of Harvey J. Steffey.)

Mr. TANNAHILL.—We move to strike out that answer of the witness, upon the ground that it is a conclusion, and not a statement of a fact.

Mr. GORDON.—Q. Did you know that they were procuring entrymen to locate on these claims and furnishing them the money, and then having the entrymen convey to them, or one of them?

A. None outside of these claims that I was connected with. [1559—1229]

Mr. TANNAHILL.—We object to that as leading and suggestive, and immaterial.

Mr. GORDON.—Q. Did you have any arrangement with Mr. Dwyer relative to locating entrymen?

A. Yes.

Q. Was that prior to the entry of the Myers claim? A. No.

Q. Well, now, state what that arrangement you had with Mr. Dwyer was.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and no date fixed.

A. Well, there was no arrangement exactly. There was an understanding, though. I had spoken—

Mr. TANNAHILL.—We object to the witness' conclusion about an understanding. What we want is what was said, so that the Court can pass on the question as to whether or not there was an agreement.

Mr. GORDON.—Q. State your understanding, Mr. Steffey.

A. Mr. Dwyer wanted to know if I had any people

(Testimony of Harvey J. Steffey.)

up there that I could locate on claims, and I told him I had good people.

Q. Was that as far as it went, or were the entrymen that you were to locate to do something with the claims after the entries were perfected?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. I always made that understood with the entrymen myself.

Q. But what was your understanding with Dwyer?

A. Well, that these entrymen would transfer these claims to them at the end of the final proof.

Mr. TANNAHILL.—We move to strike out the answer of the witness, upon the ground that it is a conclusion, and not a statement of the fact. [1560—1230]

Mr. GORDON.—Q. Who was them?

A. These entrymen that I located.

Q. Who was the them that they were to convey to?

A. Mr. Kester and Kettenbach.

Q. Now, what was done that gave you that understanding?

A. Well,—you mean before these entries were made?

Q. Yes. I am speaking of when you were talking with Dwyer.

A. Well, Mr. Dwyer and I had a talk and I had looked at some timber up there, and I told him about it, and told him it was very good.

Q. That hadn't been entered, had it?

(Testimony of Harvey J. Steffey.)

A. It hadn't been entered. And he said, "All right. Get somebody to put on it and tell them we will furnish them the money to prove up on," and he asked me what I could get them for, and I told him \$200.00, and he said that was all right.

Q. That you were to pay each entryman \$200.00?

A. Yes.

Q. And the entryman, after he had made his proof, was to convey to them? A. Yes.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. Well, now, get down to the Myers entry again. What was your first conversation with Mr. Dwyer about the Myers entry?

A. That was a claim he had contested and I told him I would get Myers to locate on it.

Q. Do you remember whether there was a relinquishment on it?

A. No, he had won it at a contest.

Q. Did he have a relinquishment?

A. Mr. Dwyer?

Q. Yes. [1561—1231]

A. Well, I couldn't say whether it was a relinquishment or not; he had some paper from the Government that he signed, and Mr. Myers gave his note for,—I really don't know,—I think \$375.00, and if I remember right, this paper was signed over to Mr. Myers, Mr. Dwyer signed the paper at least; I know he signed the paper.

Q. That was before Myers was shown on to the claim, was it not? A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. You went to see Myers. What was your arrangement with Myers?

A. I told him I would give him \$150.00, and he was to deed the claim to whoever I said.

Q. And that was before you ever showed him the claim? A. Yes, sir.

Q. I will ask you whether or not Mr. Myers agreed to that arrangement? A. He did.

Q. Did you take Myers out to the claim?

A. Yes, sir.

Q. Before you took Myers to the claim did you convey this intelligence of Myers' agreement with you to Mr. Dwyer?

A. No, I think not, although that was understood before I left Lewiston. I left Lewiston and went up and got Mr. Myers and took him out to the claim.

Mr. TANNAHILL.—We move to strike out the answer of the witness relative to what was understood, as a conclusion, and not a statement of fact.

Mr. GORDON.—Q. Before you went to see Myers, however, you had had this talk with Dwyer in which he said that he would pay so much for the entryman to go on the claim?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. That is correct, is it not, Mr. Steffey? [1562—1232] A. Yes, sir.

Q. And then you went to see Myers and made this arrangement with him that you have detailed?

A. Yes, sir.

Mr. TANNAHILL.—The same objection.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. Did I understand you to say you took Mr. Myers out to the claim? A. Yes, sir.

Q. Did you come to Lewiston to the land office with him? A. No, he came alone.

Q. Do you remember who furnished his expenses of coming here? A. I did.

Q. Do you remember how much you gave him?

A. No, I do not.

Q. Can you approximate it?

A. I think it was \$10.00.

Q. Did you tell him to come to see anyone here?

A. No, it wasn't necessary, to file, to see anybody. I think I suggested that he go to somebody and have the papers made out for him, but who it was I don't know.

Q. Did you give him a description of the timber claim? A. Yes, sir.

Q. Do you remember whether you gave him the money for the filing fee and the advertising?

A. Well, I paid the advertising fee myself.

Q. Then did you see him any time between the filing and final proof? A. Oh, yes.

Q. Did you see Dwyer in the meantime?

A. Yes, sir.

Q. Now, did you make any arrangement with anyone about getting [1563—1233] the money for final proof? A. Yes, sir.

Q. With whom was that made?

A. Well, the arrangement I made with Mr. Dwyer.

Q. Was the arrangement that you refer to, now, was that the one you made at your first conversation

(Testimony of Harvey J. Steffey.)

with him about this claim? A. Yes, sir.

Q. Did you see him afterwards, before the final proof of Myers, relative to the money for final proof?

A. Mr. Dwyer?

Q. Yes. A. Oh, I saw him frequently.

Q. Did you get the money for Myers to make his final proof? A. I did.

Q. Now, state how that transaction occurred?

A. I went to the bank and drew the money, gave my personal check for it, and gave it to Mr. Myers in cash.

Q. Did you have any arrangement by which you could draw your check?

A. If I remember right, Mr. Dwyer told me to do it.

Q. Do you remember whether you had sufficient money in bank to pay this check?

A. No, I did not.

Q. Did you have any talk with either Mr. Kester or Mr. Kettenbach or make any arrangement with them relative to drawing for that purpose?

A. No, I never had no talk with either of them about drawing my check.

Q. Did you have any talk with them about getting money for these people to make final proof?

A. Not for Mr. Myers.

Q. Did you about other entrymen that you had?

A. Yes, sir. [1564—1234]

Q. Well, you furnished Mr. Myers the money with which to make his final proof, did you not?

A. I did.

(Testimony of Harvey J. Steffey.)

Q. Do you remember whether there was anything said between you and Mr. Myers at the time he was to make his original entry as to whether or not you had an agreement with him to sell?

Mr. TANNAHILL.—We object to that as calling for the conclusion of the witness, and not a statement of fact, and leading and suggestive.

A. Well, yes, it was perfectly understood between Mr. Myers and myself that he was to deed the claim to whoever I said.

Q. I will ask you directly, did you specifically impress upon him that you didn't have an agreement?

A. Yes, I think I did.

Q. Did you have any purpose in doing that?

A. Yes, sir.

Q. What was the purpose?

A. Well, to protect myself and Mr. Dwyer and Mr. Kester and Mr. Kettenbach as much as possible.

Q. Did anyone suggest that you should tell him that? A. No, I think not.

Q. Now, did you get a conveyance from Mr. Myers after he made proof, for this timber claim?

A. I didn't understand.

Q. After Mr. Myers proved up on his claim did you get a deed of conveyance from him?

A. Yes; some time afterwards.

Q. How long afterwards, do you remember?

A. No, I don't really remember.

Q. Several months?

A. Yes, some months, two months at least.

Q. Now, state what transpired then. Did you go

(Testimony of Harvey J. Steffey.)

to see him or [1565—1235] did he come to see you?

A. No. Colonel Todd and I went down from Pierce to his place, and he made out the deed before Colonel Todd, as notary.

Q. To whom did he convey the land?

A. Kettenbach and Kester.

Q. Did you pay him anything then?

A. No, I had already paid him some on account.

Q. How much did you pay him for his claim?

A. A hundred and fifty dollars.

Q. Was that the agreement you had with him before he entered? A. Yes, sir.

Q. Now, did you ever get your money out of the claim?

A. Yes, I got some out of that claim.

Q. Now, state what you got out of it?

A. I think I got \$75.00.

Q. Now, had you talked to Kester or Kettenbach before Myers made this deed, relative to this claim?

A. No, sir.

Q. And it was in accordance with your original understanding with Dwyer that you had this claim deeded to Kester and Kettenbach? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. From whom did you get your \$75.00? A. From Mr. Dwyer.

Q. He gave you the \$75.00?

A. Well, that among other items that I put in my bill was put in.

(Testimony of Harvey J. Steffey.)

Q. Did he give you a check, or did he pay you in cash? A. He always paid me in check.

Q. Do you know whose check it was?

A. His own check. [1566—1236]

Q. To whom did you deliver the Myers deed?

A. I think it was sent by mail to the bank.

Q. Well, did you send it?

A. I believe I did.

Q. And did you send it to the bank or to someone in the bank?

A. Well, I have forgotten now. I think I sent it to the bank, the Lewiston National Bank.

Q. Do you know whether you enclosed a letter with it? A. No, I do not.

Q. Now, did you locate any other entrymen on this arrangement you had with Dwyer?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness, and not a statement of fact.

A. I did.

Q. Now, state who the entrymen were.

A. There was Clinton Perkins, Frank Bonney, James Jolly, Charles Loney, Mrs. Loney, and Mrs. Jolly.

Q. Now, do you remember which one you located after you located Myers, who was the next one, as near as you can remember?

A. Mrs. Myers I located next.

Q. Now, state what your arrangement was with Mrs. Myers?

A. That I was to guarantee that she would make

(Testimony of Harvey J. Steffey.)

\$150.00 on her claim, and I was to stand all expenses, and she was to deed it to who I said.

Q. And you had that conversation, that arrangement with Mrs. Myers personally? A. Yes.

Q. Did you take her out?

A. I had the conversation more directly with her husband; of course she was present.

Q. And that is Mrs. Jannie Myers? [1567—1237] A. Jannie Myers.

Q. And she is the wife of the Charles Myers—

A. Yes, sir.

Q. —whom you have referred to? A. Yes, sir.

Q. Now, did you take Mrs. Myers to the timber claim?

A. No, I didn't take her on the claim, no. Her brother in law, Mr. Gaffney, took her on the claim.

Q. Mr. who? A. Mr. Gaffney.

Q. Did you procure him to take her to the claim?

A. Yes. The claim was very easy to get to, and I just got him to take her out there.

Q. I will ask you whether or not she agreed to your proposition? A. She did.

Q. Now, just tell what you did with reference to that claim, and what Mrs. Myers did?

A. Mrs. Myers went out on the claim, and came down to Lewiston and filed on it.

Q. Now, did she come alone or did she come with you to Lewiston?

A. I believe her and another lady that I located, Miss Rundell, came together.

Q. Were you here? A. I was.

(Testimony of Harvey J. Steffey.)

Q. I will ask you whether or not you met them after they got here? A. I did.

Q. Do you know who paid the expenses of the trip from the Myers home to Lewiston?

A. I paid Mrs. Myers' expenses.

Q. Do you remember how much you gave her?

A. Well, I gave her \$10.00 for expenses, before she left there; I remember that distinctly. But how much I gave her after she got here— [1568—1238]

Q. Do you remember whether or not you gave her a check? A. No, I gave her \$10.00 in cash.

Q. Do you remember who prepared her filing papers?

A. I think it was either Mr. Kasberg or Mr. Mullen, I have forgotten which.

Q. Do you know who attended to having those papers prepared? A. I did.

Q. Do you remember whether there was a fee paid for preparing those papers?

A. I always did pay a fee.

Q. Do you remember paying that one?

A. Not that one in particular, no.

Q. Well, did you have a standing account with that gentleman? A. Yes.

Q. Do you remember who paid the filing fee of Mrs. Myers' entry?

A. Well, I gave her the money and she paid that herself.

Q. Do you know the description of the land that Mrs. Myers located on? A. Yes, sir.

Q. What was it?

(Testimony of Harvey J. Steffey.)

A. It was the east half of the southeast of section 26, I think.

Q. Wasn't it the west half of the southwest quarter of section 25? A. Yes, I guess it was.

Q. Township 39 north, of range 5 east?

A. Yes, sir, township 38, 5 east.

Q. Now, do you remember the time that Mrs. Myers made her final proof on the claim on which she located?

A. I think it was some time in June.

Q. You remember the occasion? A. Yes.

Q. And had you seen her between the time she filed and the time she made proof? [1569—1239]

A. Yes, sir.

Q. Did you give her any money between the times?

A. I did.

Q. How much did you give her?

A. Fifty dollars, I think.

Q. Do you remember what you gave her that for?

A. Well, that was Mr. Dwyer's suggestion, that if they wanted any money to give them some.

Q. Was it your own money that you gave her, or did you get it from someone else?

A. I gave her a check, I think.

Q. On the Lewiston National Bank?

A. Yes, sir.

Q. Now, do you remember the occasion of Mrs. Myers making her final proof?

A. Not in particular, no.

Q. I mean, do you remember that you met her?

A. Oh, yes.

(Testimony of Harvey J. Steffey.)

Q. Did you arrange to meet her? A. Yes, sir.

Q. Well, state what happened. Did you meet her here, or did you meet her at her home?

A. They came down to Lewiston, and I was here, and I gave her the money to make her final proof with.

Q. Do you remember how much you gave her?

A. Four hundred or two hundred,—I think it was \$250.00.

Q. Was her claim a quarter section?

A. No; an eighty.

Q. A what? A. An eighty acres.

Q. Where did you give her that money?

A. I think it was in the hotel.

Q. One of the hotels here? [1570—1240]

A. Yes.

Q. Did you go to the land office with her?

A. Yes; I think I was one of her witnesses.

Q. Do you remember how long it was after she made her final proof that she made a deed to this property? A. No, I do not; it was some time.

Q. A month?

A. Yes, I think it was more than a month.

Q. State the transaction of the getting of the deed.

A. I think that she made out the deed at the time that her husband made out his deed, if I am not mistaken; I think they were both made out at the same time, before Colonel Todd, the notary.

Q. The Charles Myers deed is dated March, 1906, and the Mrs. Myers deed is July, 1906. Do you remember to whom her deed ran, who was the grantee

(Testimony of Harvey J. Steffey.)

in the deed she made?

A. Kettenbach and Kester.

Q. Had you had any talk with Kettenbach and Kester about making that deed to them?

A. No.

Q. Who suggested it being made to them?

A. Mr. Dwyer.

Q. Had you had any arrangement with any of the defendants other than Dwyer about getting the money for final proof, at the time you got the money for Mrs. Myers? A. Not for Mrs. Myers, no.

Q. Did you pay Mrs. Myers anything the date she made this deed?

A. I think not, at the time she made out the deed. If I remember right, I brought the deed to Lewiston myself, and when I went back I paid her the balance of the money that was coming to her.

Q. How much balance was there?

A. It was somewhere about \$50.00. [1571—1241]

Q. How much did she get out of her claim from you over and above expenses, altogether?

A. A hundred and fifty dollars.

Q. That was in accordance with the arrangement you had with her before she went to the claim, was it not? A. Yes, sir.

Q. You used the expression that Mrs. Myers "made out the deed." What did you mean by that, Mr. Steffey?

A. Well, I didn't mean that she made out the deed; she made the deed to the people, I suppose is what I meant.

(Testimony of Harvey J. Steffey.)

Q. She signed the deed?

A. She signed the deed is what I meant by "made."

Q. Do you know who prepared these deeds that you have referred to, the Charles Myers deed and the Jannie Myers deed?

A. Well, they were prepared here in Lewiston somewhere.

Q. Whom did you get them from?

A. Mr. Dwyer.

Q. Did you get any money for the Jannie Myers claim? A. No.

Q. Did you get the money that you had advanced?

A. Oh, yes.

Q. From whom did you get that?

A. Mr. Dwyer.

Q. How much did you get?

A. Well, I simply made an item of all the expenses that I went to, and when I turned in my expense account it was all lumped together, and he usually gave me a check for the whole thing.

Q. That was for each claim?

A. Well, not each claim altogether, but the whole thing that I did.

Q. I mean, did you have more than one settlement with Mr. Dwyer? A. Oh, yes.

Q. Do you remember whether, on the Myers claim, you got anything [1572—1242] over and above what you had expended on it? A. No.

Q. You say you didn't?

A. I don't think I did. I believe I did, too. That was the claim that Mr. Dwyer agreed that he could

(Testimony of Harvey J. Steffey.)

pay so much for the claim, and I think it was \$150.00, and I asked him if he couldn't pay any more than that, and he said no, he could get plenty of people to put on it for less than that.

Q. Was that conversation before you located Mrs. Myers? A. Yes; before I located Mrs. Myers.

Q. I show you a check, drawn on the Lewiston National Bank, dated July 10, 1906, in the sum of \$10.00, payable to the order of Jannie M. Myers, and signed H. J. Steffey, and ask you if that is your signature to that check? A. Yes, sir.

Q. Is that one of the checks that you gave to Mrs. Myers, in relation to her entry? A. Yes, sir.

Mr. GORDON.—We offer the check in evidence.

Said check was thereupon marked by the stenographer as Exhibit 55.

Mr. TANNAHILL.—We object to it in so far as it relates to bills No. 388 and 406, upon the ground that the Myers entry is not involved in either of these two particular actions.

Mr. GORDON.—Q. I show you a check, dated January 23, 1906, on the Lewiston National Bank, drawn to the order of Charles S. Myers, in the sum of \$75.00, signed H. J. Steffey, and endorsed Chas. S. Myers, and ask you if that is a check you gave Charles S. Myers in the transaction you had with him relative to the taking up and purchase of his timber claim? A. Yes, sir.

Mr. GORDON.—We offer that check also in evidence. [1573—1243]

Said check was thereupon marked by the sten-

(Testimony of Harvey J. Steffey.)

ographer as Ex. 56.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—I show you a check dated March 20, 1906, to the order of Charles S. Myers, in the sum of \$40.00, signed H. J. Steffey, and endorsed Chas. S. Myers, and marked "Paid April 19, 1906," stamped by the Lewiston National Bank, and ask you if that is a check that you gave Mr. Myers as a part of the transaction you had with him in taking up and purchasing his timber claim? A. Yes, sir.

Mr. GORDON.—We offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 57.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. I show you another check, dated March 20, 1906, drawn on the Lewiston National Bank, to the order of Charles S. Myers, for \$45.45, signed H. J. Steffey, and endorsed Chas. S. Myers, with the stamp of the Lewiston National Bank on the front of it, marked Paid April 19, 1906, and ask you if that is another check that you gave Mr. Myers in the transaction you had with him relative to his timber claim? A. Yes, sir.

Mr. GORDON.—We offer that in evidence also.

Said check was thereupon marked by the stenographer as Ex. 58.

Mr. TANNAHILL.—The defendants severally object to the admission of any of the checks just offered in evidence, in so far as they relate to bills No. 388 and 406, upon the ground that the entry of the witnesses in whose favor the checks are drawn are not

(Testimony of Harvey J. Steffey.)

involved in either of these actions, and it is irrelevant and immaterial.

At this time an adjournment was taken until 2 o'clock P. M. [1574—1244]

At two o'clock P. M. the hearing was resumed.

HARVEY J. STEFFEY, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled in behalf of the complainant, testified as follows, to wit:

Mr. GORDON.—Mr. Tannahill, will it be agreed between us that the Myerses—the Jannie Myers that he is talking about, the witness he is testifying to, and the Charles Myers that he has testified concerning—are the same Myerses whose entries were put in, and who testified on the stand in behalf of the Government?

Mr. TANNAHILL.—Yes.

Direct Examination (Continued).

(By Mr. GORDON.)

Q. Now, Mr. Steffey, the next claim, according to the dates that these entries were made, that was located, is the James T. Jolly entry. You know James T. Jolly, do you? A. Yes, sir.

Q. And you know Charles E. Loney?

A. Yes, sir.

Q. No—the next claim, instead of those two, seems to be Effie A. Jolly. The entry was made March 23, 1906. Do you remember Mrs. Effie A. Jolly?

A. Yes, sir.

Q. And is she the wife of James T. Jolly?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. Now, do you remember anything in connection with their claims? A. Yes, sir. I located them.

Q. Now, did you have any arrangement with Mr. Dwyer relative to [1575—1245] those entries?

A. Yes, sir.

Q. Separate and distinct from the first arrangement you had with him? A. Yes, sir.

Q. Was this a distinct arrangement?

A. Yes. Oh, yes.

Q. Did you—

A. It was distinct from the two Myers claims.

Q. They were? A. Yes, sir.

Q. Now, tell about the Jolly entries. What was said and done concerning them?

A. Well, I told Mr. Dwyer that there were two claims there, rather different claims as to value, and that I had a couple of people that I could put on them, and he said “All right; locate them.”

Q. Did you tell him what arrangement you could make with the people you could put on them?

A. Yes, sir.

Q. What did you tell him?

A. I told him that they would locate them for \$200.00, and deed them over to them—to whoever he said, or whoever I said.

Q. And what else did you do, with regard to the money that they were to have over their expenses?

A. I paid all of their expenses. That was the agreement.

Q. I didn't mean that. Did you have any conversation with Dwyer about that?

(Testimony of Harvey J. Steffey.)

A. Yes; that was the understanding, that all these people should get so much and their expenses.

Q. And what did Dwyer say?

A. Well, about these particular claims I don't remember that he said anything; but that was agreed that that was all right. [1576—1246]

Mr. TANNAHILL.—I move to strike out the statement of the witness as to the understanding or agreement, as a conclusion and not a statement of the fact.

Mr. GORDON.—Q. Now, have you told what you were to get for locating these people and having them turn their claims over?

A. No; there was no agreement or understanding what I was to get.

Q. Well, was there anything said about it?

A. Well, only in an indirect way.

Q. Well, now, by whom was it said, and what was said? A. Just Mr. Dwyer.

Q. And what did he say about it?

A. Well, that I would be all right; I would get my share.

Q. You were to have a share out of the proceeds?

A. Well, yes, that is the way I understood it. There was no direct understanding—never was—between us, about that.

Q. Now, in these claims that you were to locate, and did locate, I want to know exactly what the understanding between you and Mr. Dwyer was, as to what each entryman was going to get over and above what it would cost him.

(Testimony of Harvey J. Steffey.)

Mr. TANNAHILL.—We object to the question, upon the ground that it calls for a conclusion of the witness and not a statement of the fact, and irrelevant and immaterial.

Mr. GORDON.—Read the question over again. The objection is so long I can't remember what the question was.

The Reporter thereupon repeated the last question.

Mr. GORDON.—Q. How much was each entry-man to get? A. \$200.00.

Q. And what was to be included in what the cost of the entry would be?

A. Well, that was outside of any expenses that he was to be put [1577—1247] to. They was to get \$200.00 clear.

Q. Now, their expenses were the railroad fare?

A. Yes.

Q. And the original entry? A. Yes.

Q. And the \$400.00 for final proof. Now, what expenses were there over that?

A. Well, there was the publication.

Q. Now, was there a locator's fee? A. No.

Q. Added to that?

A. No; there was no locator's fee added to that.

Q. You never charged a locator's fee at all?

A. No.

Q. Now, tell us all that you can remember relative to the entry of Effie A. Jolly, from the very first thing that was done concerning that entry?

A. Well, I went and looked at the claims—that

(Testimony of Harvey J. Steffey.)

claim and Mrs. Loney's claim—they are adjoining claims.

Q. Now, what Mrs. Loney is that?

A. Mary A. Loney.

Q. Yes?

A. And I spoke to Mr. Dwyer about it and told him the character of the claims as near as I could, what they were, and if I remember right he said, "Locate them, anyway"; and in the meantime we went up and looked at them.

Q. Who went and looked at them?

A. Mr. Dwyer and myself.

Q. Yes.

A. And, as I say, they were not exceptionally good, and he seemed to not care for them very much, and we had some talk about it, so I suggested, "Well," I says, "Let them prove up on it and just pay [1578—1248] them that, and I won't want any interest in them at all, or, I won't want anything for locating," and he said, "All right, let them go ahead and locate."

Q. Now, was that conversation before you had taken these entrymen to the claims?

A. I don't know now whether that was before or afterwards; I think it was afterwards—after I had taken them and located them; I am quite sure it was.

Q. Now, did you talk to him about these Loney claims before you had located them? A. Yes.

Q. The Loney and the Jolly claim?

A. The Mrs. Loney and Mrs. Jolly claim; I had spoken to him about them.

Q. And are those the ones that you say you told

(Testimony of Harvey J. Steffey.)

him were not so very good?

A. Yes, those are the ones.

Q. Now, what did he say to do? Now, I am talking of before you had ever taken the entrymen to the claim or they had filed any of their papers?

A. He said to go ahead and locate them anyway.

Q. Now, was there anything said at that time as to what was to be paid to the entrymen for their right, or their claim? A. \$200.00.

Q. Now, what arrangement did you have with Mrs. Mary A. Loney and Mrs. Jolly, if any?

A. I guaranteed them \$200.00 above all expenses.

Q. And was anything said about who was to furnish the money?

A. No. No, I didn't—well, I led them to think that I would furnish the money.

Q. Well, did they locate together?

A. Yes. [1579—1249]

Q. Or did they attend to it together?

A. They came down together, and I took them on the claims together.

Q. That is Effie A. Jolly—

A. —and Mary A. Loney.

Q. You took them over the claims together?

A. Yes, sir.

Q. And did you come down to Lewiston with them?

A. I believe I did, yes.

Q. Now, do you remember who paid the expenses of that trip into the timber and then down here to file the sworn statement and other papers?

A. I did.

(Testimony of Harvey J. Steffey.)

Q. And do you know who prepared their filing papers?

A. It was either Kasberg or Mr. Mullen.

Q. And did you pay for that? A. I did.

Q. Do you remember who paid the filing fee for those two entries and the publication? A. I did.

Q. And do you know whether they were notified at the time proof was made?

A. Mrs. Loney and Mrs. Jolly?

Q. —was to be made?

A. Mrs. Loney and Mrs. Jolly?

Q. Yes. A. Yes.

Q. Who notified them?

A. Well, I don't think it was necessary to notify them. The publication notice stated when the final proof was to be made.

Q. Well, did you meet them, or see them?

A. Yes; I came down with them. [1580—1250]

Q. And who paid that expense? A. I did.

Q. Railroad fare and all? A. Yes, sir.

Q. And who paid the money that was paid in the land office for the purchase of this land?

A. I gave them the money.

Q. How much did you give them?

A. I think it was \$450.00 apiece.

Q. And was that the same day that they made proof? A. Yes, sir.

Q. And where did you get the money from?

A. I got it from the Lewiston National Bank.

Q. And how did you get it from the Lewiston National Bank? A. I gave my check for it.

(Testimony of Harvey J. Steffey.)

Q. Do you know whether your account was good for it at that time?

A. Well, my check was good for it.

Q. I mean was your account sufficiently large to meet a check of that size at that time?

Mr. TANNAHILL.—We object to that, on the ground that the account is the best evidence.

Mr. GORDON.—Not necessarily, sir. It might be in some banks, but not always in the bank to which you have reference.

The last question was thereupon repeated by the Reporter.

WITNESS.—No.

Mr. GORDON.—Q. And did you have any arrangement about overdrawing your account?

A. Mr. Dwyer told me to.

Q. And what did he tell you about it?

A. Just to give them my check.

Q. Did he say whether or not it would be protected?

A. I think very likely he did. [1581—1251]

Q. Well, do you remember? Do you have any distinct recollection? A. No, I don't.

Q. Do you know how much money you gave Mrs. Jolly and Mrs. Loney for their expenses when they made proof? A. No, I don't—

Q. I mean aside from what they paid in the land office? I mean for their trip to Lewiston and returning to their homes?

A. Oh! I think it was \$25.00 or \$30.00, if I remember correctly.

(Testimony of Harvey J. Steffey.)

Q. Apiece, or—

A. No; between the two of them. It possibly may have been \$35.00.

Q. Now, did you have anything to do with the conveyances by these two entrymen that you have referred to, to Kester and Kettenbach? A. I did.

Q. Now, state what you had to do with that transaction.

A. I had the deeds made out to Kester and Kettenbach, and I think they were sent to the bank.

Q. Now, did you have the deeds prepared?

A. I don't remember now whether the deeds were prepared down here or prepared up there; I have really forgotten.

Q. And did you go to see these people by yourself to get the deeds executed, or did you go with someone?

A. I think they were—no, I didn't go with them.

Q. Did anyone go with you to see about getting deeds?

A. Not when they went and executed them before a Justice of the Peace or Notary.

Q. Well, any time afterwards or before that?

(No answer.)

Q. I mean did Mr. Dwyer ever go with you on any occasion to see any of these entrymen? [1582—1252] A. No, he didn't.

Q. And did you pay either one of these ladies anything when you obtained the deed from them?

A. I think I did. I gave them a balance of what was due them.

(Testimony of Harvey J. Steffey.)

Q. And what was due them?

A. \$25.00 or \$50.00 apiece.

Q. And how did you reckon that \$25.00 or \$50.00 apiece was due them?

A. I had already advanced them money on those—well, their claims were held up—the final receipt was held up; and in talking the matter over with Mr. Dwyer one time he told me if they wanted any money why to let them have it.

Q. And all that you advanced them would amount to how much? A. \$200.00.

Q. Did you ever have any talk with any of these entrymen as to how much they were to get, other than the first time that you broached it to them?

A. No, sir.

Q. Before entry? A. I did not.

Q. And when you went to get the deed, it was under the original arrangement, was it not? A. Yes, sir.

Q. Nothing was said at that time about how much they were to get?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. I say at the time they made the deed nothing was said about how much they were to get?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, sir.

Mr. GORDON.—Q. And did any of them have any complaint as to the amount you [1583—1253] were giving them?

Mr. TANNAHILL.—Note the same objection.

(Testimony of Harvey J. Steffey.)

WITNESS.—None whatever.

Mr. GORDON.—Q. They took just what you gave them?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Mr. Steffey, I show you a check dated December 4, 1906, on the Lewiston National Bank, to the order of E. A. Jolly, in the sum of \$50.00, signed H. J. Steffey, endorsed E. A. Jolly and J. L. Coonz, and marked paid December 18, 1906, by the Lewiston National Bank stamp, and ask you if that is a check which you gave Mrs. Effie A. Jolly in connection with the purchase of her timber transaction? A. It is.

Mr. GORDON.—I will offer that check in evidence.

Said check was thereupon marked by the Reporter as Exhibit 59.

Mr. GORDON.—I show you a check dated February 28, 1907, on the Lewiston National Bank, to the order of E. A. Jolly, in the sum of \$25.00, signed H. J. Steffey, endorsed E. A. Jolly and W. J. Todd, and Pay the Lewiston National Bank, Lewiston, Idaho, or order. Idaho Mercantile Co.. A. J. Campbell. And I will ask you if that check was drawn by you?

A. Yes, sir.

Q. And was that delivered by you to Mrs. Jolly as expense money, or a payment in any way for the timber entry?

A. I think it was a partial payment of what was due her for the entry.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—I offer that check in evidence, also.

Said check was thereupon marked by the Reporter as Exhibit 60.

Mr. GORDON.—Q. I will show you a check dated July 13, 1906, on the Lewiston [1584—1254] National Bank, payable to the order of Charles E. Loney for \$5.00, signed H. Steffey, and endorsed Charles E. Loney and Charles S. Myers, and ask you if you signed that check. A. I did.

Q. And you delivered that to Mr. Charles E. Loney in connection with the transaction you had with him relative to his timber entry?

A. I think not. I don't think that check had any reference to his timber entry. It was a matter that he was working for me—he did some work for me.

Q. I show you a check dated December 4, 1906, drawn on the Lewiston National Bank to the order of Mary A. Loney in the sum of \$50.00, signed H. J. Steffey, and endorsed Mary A. Loney and J. L. Coonz, and the stamp of the Lewiston National Bank marked Paid December 18, 1906, and ask you if you signed that check. A. I did.

Q. And did you deliver it to Mrs. Mary A. Loney?

A. I did.

Q. And what was that for?

A. That was a payment on her timber claim.

Mr. GORDON.—We offer that check in evidence also.

The Reporter thereupon marked said check as Exhibit 61.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. I show you a check dated February 28, 1907, payable to the order of Mary A. Loney, in the sum of \$25.00, signed H. J. Steffey, and endorsed Mary A. Loney, W. J. Todd and F. Roos, Jr., with the paid stamp of the Lewiston National Bank on the front of it, dated March 27, 1907, and ask you if you signed that check. A. I did.

Q. And did you deliver it to Mrs. Loney?

A. I did.

Q. And was that in connection with her timber entry? A. Yes, sir. [1535—1255]

Mr. GORDON.—We offer that check in evidence.

The Reporter thereupon marked said check as Exhibit 62.

Mr. TANNAHILL.—The defendants severally object to the admission of any of the checks in evidence in so far as they relate to bills No. 388 and 406, upon the ground that the entries referred to by the witness are not involved in either of these actions, irrelevant and immaterial.

Mr. GORDON.—Q. Mr. Steffey, I will ask you whether or not the procuring of Mary Loney and Effie A. Jolly to enter the two timber claims, and the subsequent conveyance to Kester and Kettenbach, was in accordance with your original agreement with Mr. Dwyer?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Answer.

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And I will ask you whether or not it was the carrying out of an agreement that you had with Mrs. Loney and Mrs. Jolly before they entered these timber claims?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. I find two entries made April 3, 1906; one is Charles S. Loney and the other is James T. Jolly. Do you know anything about those entries, Mr. Steffey?

A. Yes, sir.

Q. Do you know whether or not Mr. James T. Jolly is a relative of Mrs. Effie A. Jolly?

A. He is her husband.

Q. And is Charles Loney the husband of Mary A. Loney? A. Yes, sir.

Q. Now, state what you know about the entry of those two claims. [1586—1256]

A. I located them.

Q. Well, now, did you have any talk with Mr. Dwyer about those claims before locating them?

A. Yes, sir.

Q. Now, state what was said about them.

A. I had looked up the claims, and came down to Lewiston and met Mr. Dwyer and told him I had two exceptionally good claims, and that I had some people to put on them, and he said "All right," and he asked me about the claims, and I told him that one of them was exceptionally good, I thought; and we went into the bank, and he was telling Mr. Kester about the matter, and I compared it to another

(Testimony of Harvey J. Steffey.)

claim called the Dell Marie, and told him one of them was better than that, and I think he asked me if I had anybody to put on them, and I told him I had, and he said if it was better than the Dell Marie claim that we would have a champagne supper.

Q. That was Mr. George H. Kester said that?

A. No; it was Mr. Dwyer that said that. Mr. Kester was inside of the railing of the bank.

Q. Well, did I understand that the discussion as to the comparative merits of these two claims was discussion with Mr. Kester?

A. Right before Mr. Kester, yes.

Q. And this Dell Marie claim that you referred to, is that the Carrie D. Maris claim?

A. That is the one, yes.

Q. Now, this conversation, as I understand, was before any entry had been made on the claim whatever? A. Yes, sir.

Q. And had you seen Mr. Loney and Mr. Jolly about those claims prior to this conversation?

A. I don't think I had.

Q. Well, now, did you see them afterwards?

A. I did. [1587—1257]

Q. And state what you said to them about it.

A. I took them on the claims with the understanding that they were to get \$200.00 over and above all expenses.

Mr. TANNAHILL.—We move to strike out the statement of the witness relative to the understanding, upon the ground that it is a conclusion of the witness, and not a statement of the fact.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. And from what did you get that understanding? What did you say to them?

A. Well, I told them in this way: I guaranteed that they would get \$200.00 over and above all expenses out of their timber entries.

Q. And was anything said about you furnishing the money?

A. Yes; I was to furnish the money, and I was to furnish all expenses.

Q. And you guaranteed them \$200.00?

A. Yes, sir.

Q. Above expenses?

A. \$200.00 above all expenses.

Q. And did they agree to that proposition?

A. They did.

Q. And did you take them to view the claims together? A. Yes, sir.

Q. And were you present when they made their original filing and filed their sworn statement in the land office? A. I think I was, yes.

Q. Do you know whether or not you paid their expenses to go from their homes to Lewiston when they made their filing? A. I did.

Q. And do you know how much it was that you paid? A. No; I can't remember now.

Q. Do you remember whether or not, or do you know who had their filing papers prepared for them? [1588—1258]

A. No. Without referring to some of my notes I couldn't say. Sometimes I had Mullen, and sometimes Kasberg did that, and sometimes Williams.

(Testimony of Harvey J. Steffey.)

Q. Well, do you remember whether you had their papers prepared for them? A. I did.

Q. And you paid whatever expense was incidental thereto? A. Yes, sir.

Q. Do you know who paid the filing fee for those two entries in the land office, and the publication fee?

A. They paid the filing fees; but I paid the publication fees.

Q. Do you mean that they paid the filing fees with their own money?

A. Well, I gave them the money to pay it with.

Q. Now, state how that was.

A. Well, I simply gave them the amount necessary to pay their filing fees.

Q. And was that given together with their expenses down here? (No answer.)

Q. Do you understand me?

A. Yes, I understand. Well, I usually drew a check a little in excess of what was necessary for their filing fees, and they retained the balance. I can't remember exactly what it was now.

Q. And after they filed did you have any talk with them between then and the date of making proof, as to the money for making proof?

A. Well, they understood that I was to get the money for them to prove up on the final proof.

Mr. TANNAHILL.—I move to strike out the statement as to what the witness understood, on the ground that it is impossible for the witness to know what anybody else understood, and it is a conclusion and not a statement of the fact.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—[1589—1259] Q. State where they got that understanding, Mr. Steffey.

A. I told them I would furnish the money for them.

Q. And did you see them the day they made their proof? A. Yes, sir.

Q. Were you at Lewiston, or did you come with them?

A. I came down with them, I think, or I may have been here the day before.

Q. Well, do you remember those two persons on that occasion, whether you did come with them, or whether you just met them here.

A. Well, I met them in Lewiston on the day they made their final proof.

Q. And you don't remember whether you came down with them from their home or not?

A. No, I don't.

Q. And did you meet them by arrangement?

A. Yes, sir.

Q. Or just casually? A. By arrangement.

Q. And did you give them the money to make proof that day? A. I did.

Q. And how much did you give each one of them?

A. \$450.00.

Q. And where did you get that money?

A. From the Lewiston National Bank.

Q. And did you go with them to the land office when they made their proof?

A. I think I did. If I remember right, I was a witness for them.

(Testimony of Harvey J. Steffey.)

Q. Well, what did you give them each that \$450.00 for?

A. To make their final proof with and pay the land office money for the land.

Q. Now, I notice that both of these gentlemen made their final [1590—1260] proof on June 19th, 1906, and that each of them executed a deed to George H. Kester and William F. Kettenbach on July 11th, 1906—less than a month later. Do you remember anything about that transaction of the making of the conveyance to Kester and Kettenbach?

A. I don't remember the details of it, no, not exactly.

Q. Well, did you get the deed from them?

A. I think I did, yes.

Q. Was anyone with you when you got it from them?

A. I don't remember whether there was or not.

Q. Well, do you remember where you got the deed from them? A. I think it was at Fraser.

Q. And that is how far from their home?

A. Fraser is—well, they are right in the Fraser District. It is a mile and a half from the postoffice called Fraser.

Q. Do you remember whether you paid either or both of them any money at the time they made those deeds that I have referred to?

A. I think I paid them the balance that was due them.

Q. Have you any distinct recollection as to when

(Testimony of Harvey J. Steffey.)

you paid them, and how much it was?

A. No, I haven't.

Q. But you paid them altogether how much?

A. \$200.00.

Q. And do you remember whether you delivered the deed to anyone or not—the deeds?

A. No, I don't; I don't remember whether it was sent down by mail or whether it was delivered.

Q. Do you remember—

A. Or whether I brought it down. I couldn't say.

Q. Do you remember whether or not Mr. Dwyer was present when those deeds were made?

A. He was not. [1591—1261]

Q. Did the Myerses and the Jollys and the Loneys live in the same neighborhood? A. Yes, sir.

Q. All somewhere near Fraser? A. Yes, sir.

Q. And how far is that from Lewiston?

A. Well, it is about 55 or 60 miles—55 or 58 miles.

Q. Do you know Mr. Clinton E. Perkins?

A. Yes, sir.

Q. And do you know where he resided in the Spring of 1906? A. Yes, sir.

Q. Where? A. Fraser, Idaho.

Q. Did you have anything to do with his timber and stone entry? A. Yes, sir; I located him.

Q. Well, now, state whether or not you had any arrangement with him for locating him.

A. Yes, sir; he was to get \$200.00 above all expenses for location.

Q. And what was he to do to get the \$200.00?

A. To deed it to who I said.

(Testimony of Harvey J. Steffey.)

Q. You made that proposition, did you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. I will ask you whether or not you made that proposition, Mr. Steffey, to him?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And did he accept it?

A. Yes, sir.

Q. Now, did you go to see Mr. Perkins, or did he come to see you? [1592—1262]

A. Well, I think Mr. Perkins had previous to this spoken to me that he would like to get a timber claim—be located on a timber claim.

Q. Now, did you talk to Mr. Dwyer about this claim before any entry was made of it?

A. Mr. Dwyer and I looked at the claim together.

Q. Was that before the entry was made by Perkins? A. Yes, sir.

Q. And was there any conversation had between you and Mr. Dwyer about this claim? A. Yes, sir.

Q. Well, now, state what that was.

A. We went and looked at the claim together, and he told me I had better get somebody and put on it right away; that it was a good claim, and he didn't want to take any chances of losing it.

Q. And was anything said at that time between you and Mr. Dwyer as to what the entryman could be paid?

A. Not in particular. I don't remember of anything at that time; but the understanding was that

(Testimony of Harvey J. Steffey.)

he was to be paid the same as the other people that I had located.

Mr. TANNAHILL.—We move to strike out the statement of the witness as to the understanding, upon the ground that it is a conclusion and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not that statement or that understanding wasn't gained by you from the fact that you were carrying through a previous arrangement which you had with Mr. Dwyer which you have stated here?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Did you take Mr. Perkins to this timber claim? [1593—1263]

A. I did.

Q. And were you present when he filed his sworn statement?

A. I don't think I was, although I have forgotten.

Q. Well, do you know who paid his expenses from Fraser down to Lewiston? A. I did.

Q. And do you remember who paid the filing fee and his publication?

A. Well, I gave him the money to pay for his filing fee, and I paid the publication notice.

Q. And do you remember the occasion of Mr. Perkins making his final proof? A. Yes.

Q. And do you know where he received the money or got the money with which to make proof?

A. I gave it to him here in Lewiston.

(Testimony of Harvey J. Steffey.)

Q. Do you remember how much you gave him?

A. \$450.00.

Q. Do you remember when you gave it to him?

A. On the day he made his final proof.

Q. Do you know where?

A. No, I don't remember where. It was somewhere on the street.

Q. Did you just meet him incidentally, or did you have an appointment with him?

A. Oh, I had an arrangement with him that I was to be here and give him the money to prove up with.

Q. Did you go to the land office with him when he made his proof?

A. I don't remember whether I did or not. If I was one of his witnesses, I probably did.

^ Do you remember whether or not this Clinton E. Perkins conveyed his title to someone after final proof? [1594—1264]

A. He conveyed it to Kester and Kettenbach.

Q. Did he convey it to Kester and Kettenbach, or just to Kester, or don't you know?

A. I think it was to Kester and Kettenbach.

Q. And did you get him to sign the deed?

A. Why, I have forgotten whether he signed the deed up there or came to Lewiston and signed the deed.

Q. Well, do you remember the incident of his signing the deed, or don't you? A. No, I don't.

Q. Well, do you remember of paying him any money besides the expenses you advanced him?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. How much did you pay him?

A. I think the balance coming to him was somewhere about \$60.00 or \$70.00, and I gave it to him in cash one time after I had left Lewiston.

Q. Well, a balance of what was it you paid him?

A. A balance of the \$200.00 that was coming to him.

Q. Had you been advancing him money?

A. I had.

Q. Between times? A. Yes, sir.

Q. Do you know Mr. Frank J. Bonney?

A. Yes, sir.

Q. And do you know whether or not he took up a claim under the timber and stone act?

A. I do.

Q. What do you know about his entry?

A. I located him.

Q. Did you have an arrangement or an agreement with him?

A. Yes, sir. I agreed—I guaranteed that he would make at [1595—1265] least \$200.00—or, no—I agreed that he would make \$175.00 or over out of his claim.

Q. And what were you to do in the matter?

A. I was to furnish the expenses, and furnish his land office money to pay for the land at the land office.

Q. And what was he to do?

A. He was to locate it and make final proof, and deed it to who I designated.

Mr. TANNAHILL.—I move to strike out all the

(Testimony of Harvey J. Steffey.)

evidence of the witness relative to what it was agreed or understood in relation to this particular claim, upon the ground that it is a conclusion, and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not you told him this—that you made this agreement with him that you have detailed here?

Mr. TANNAHILL.—I object to that as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And did he accept the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Did you carry out your part of the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—I did.

Mr. GORDON.—Q. I will ask you whether or not he carried out his part of the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—He did.

Mr. GORDON.—Q. And did you have any talk with Mr. Dwyer concerning this [1596—1266] Bonney entry, prior to the entry being made?

A. Yes, sir.

Q. Well, was it with reference to this particular entry, or was it in conjunction with the other entries you have told about?

A. Well, I don't think there was anything in particular said about this claim, only that it was a rather good claim.

(Testimony of Harvey J. Steffey.)

Q. And were you present when he made his original filing? A. I don't think I was.

Q. Well, were you at Lewiston at the time he came down to make his filing? A. I think not.

Q. Do you know whether he paid his own expenses down here, and his filing fees, or whether someone paid it for him?

A. I paid them—gave him the money.

Q. Do you remember how much you gave him for that purpose? A. No, I don't.

Q. Can you approximate it?

A. It was \$25.00 or \$30.00.

Q. And do you know where Mr. Bonney got his money with which to make his proof?

A. I gave it to him.

Q. And do you remember where you gave it to him? A. I think it was in the Bollinger Hotel.

Q. And do you remember when it was, relative to the time he made his proof?

A. The day that he made his proof.

Q. And what did you give him the money for?

A. To pay for the land office fees.

Q. To make his proof?

A. To make his proof—final proof.

Q. And do you remember how much you gave him?

A. \$450.00. [1597—1267]

Q. And did you go to the land office with him? Were you one of his witnesses?

A. I have forgotten whether I was or not.

Q. Do you know whether or not Mr. Bonney conveyed this claim upon which you entered him to

(Testimony of Harvey J. Steffey.)

Kester and Kettenbach, later? A. He did.

Q. And do you know who procured the deed?

A. I had Colonel Todd, a notary, go out to his home on the stage route between Pierce and Weippe, and he made out the deed, and I think it was sent by mail to Kester and Kettenbach.

Q. And had you advanced Mr. Bonney any money in the meantime? A. I had.

Q. And did you give him any at the time that he made the deed or afterwards?

A. I think I paid him the balance due him afterwards.

Q. Do you remember how much that was?

A. Why, altogether he got two hundred and twelve some odd dollars out of his claim.

Q. And how much was he to get?

A. He was to get at least \$175.00.

Q. And do you know why it was you gave him \$212.00 instead of \$175.00?

A. Why, I have forgotten—it was some arrangement—I had advanced some money to him, and I think the balance—he wanted \$50.00 or something, and that final \$50.00 just made it come to twelve dollars and something over the \$200.00, so I just let it go.

Q. I will ask you, Mr. Steffey, whether or not these eight claims concerning which you have testified to the entries, were made in accordance with the agreement that you had with Mr. Dwyer that you have detailed, and the conveyances made to Kester and Kettenbach in accordance with the same arrange-

(Testimony of Harvey J. Steffey.)

ment you had with Dwyer, and the arrangement you had with each of the entrymen you have detailed?
[1598—1268]

Mr. TANNAHILL.—Objected to as leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Now, did you ever make any other or procure any other person to make an entry under an agreement that you would furnish all the money, and *they* after they made proof they would convey it to whomsoever you would suggest, on the payment of \$200.00? A. Outside of these others?

Q. Yes. A. Yes.

Q. And was that made on the arrangement that you had had with Dwyer? A. Yes, sir.

Q. Well, now, what entry was that?

A. That was the Catherine Irwin and Charles Irwin claims.

Q. And did you have them convey to Kester and Kettenbach? A. No.

Q. To whom did you have them convey?

A. To myself.

Q. And did you have any reason for not carrying out your agreement with Mr. Dwyer? .

Mr. TANNAHILL.—Mr. Gordon, if you will just pardon me. Those claims are not involved in the suit, are they?

Mr. GORDON.—No.

Mr. TANNAHILL.—We object to the evidence of the witness relative to those claims, on the ground

(Testimony of Harvey J. Steffey.)

that they are not involved in any of the actions now pending.

The last question was thereupon repeated by the Reporter.

WITNESS.—I did.

Mr. GORDON.—Q. What was it?

A. We had had a little misunderstanding, and I wanted to know [1599—1269] something about what I was to get out of this timber locating, and he said I wasn't to get anything; so I thought I would protect myself the best way I could, and get what I could.

Q. That was after you had had the conveyances of the eight claims made to Kester and Kettenbach?

A. Yes.

Mr. GORDON.—Now, Mr. Tannahill, will you and the other counsel stipulate that the Charles E. Loney entry that the witness has testified concerning, and the Mary A. Loney claim, and the Frank J. Bonney claim, and the James T. Jolly claim, and the Effie A. Jolly claim, and the Charles S. Myers claim, and the Jannie Myers claim, and the Clinton E. Perkins claim, are the same claims that are set out and referred to in Equity Bill No. 407?

Mr. TANNAHILL.—Yes, I am willing to stipulate that. That is the same witnesses who testified here on the stand, isn't it?

Mr. GORDON.—Yes; but if you will remember there are there or four of them who are to be taken in Portland.

Mr. TANNAHILL.—Yes. Well, I say, the wit-

(Testimony of Harvey J. Steffey.)

nesses who did testify are the same witnesses? You refer to these witnesses who did testify?

Mr. GORDON.—Yes; and that the other claims he has referred to are set out in Bill 407.

Mr. TANNAHILL.—Yes.

Mr. BABB.—That's all right.

Mr. GORDON.—Q. Mr. Steffey, after you got these deeds from these various entrymen that you have referred to, did you ever get them to make an affidavit? A. Yes, sir.

Q. Now, state how you happened to get them to make the affidavit.

A. Well, it was after the trials at Moscow.

Q. The trials of who at Moscow?

A. Kester's and Kettenbach's and Dwyer's trials.

[1600—1270]

Q. Now, what did you do?

A. They had a form—a typewritten form—that they told me to take up and have these people sign.

Q. And what was the purpose of that?

A. Well, it was an affidavit saying that they had made no agreement—previous agreement—to dispose of their land; something of that kind.

Q. And what was the purpose of getting that affidavit? Was that explained to you?

A. Well, to protect themselves as much as possible against any appearance of fraud, I suppose. That is the way I understood it.

Q. I will ask you whether or not you told each of these entrymen when you had your conversation with them that you could not make an absolute agree-

(Testimony of Harvey J. Steffey.)

ment with them? A. I think I did; yes.

Q. I show you a blank form of an affidavit and ask you if you have ever seen that paper before?

(Handing document to witness, who examined the same.)

A. I have seen one just like it.

Q. Now, where did you see one just like it?

A. There was some given to me, or to Mr. Dwyer, of that kind, and he told me to take it up there and have those people swear to it before a notary.

Q. That is, the entrymen you had gotten?

A. Yes, sir.

Q. Did you have any discussion with him about it at that time?

A. No, only I believe he said that this was the way it was done in South Idaho, and I understand that Mr. Borah advised him to have this done.

Mr. TANNAHILL.—I move to strike out the statement of the witness as to what he understands, as a conclusion, and not a statement of the fact.
[1601—1271]

Mr. GORDON.—Q. From whom did you get that understanding? A. Mr. Dwyer.

Q. Did Mr. Dwyer make that statement to you?

A. Yes, sir.

Q. And so you had each one of the eight entrymen that you had induced to enter the tracts that you have referred to make an affidavit similar to that?

A. Well, not each of the eight. I think there was some of the entrymen—some of the people that I had located—that had not transferred their claims yet.

(Testimony of Harvey J. Steffey.)

There was only two in particular that I remember that I took those affidavits to and had them sign affidavits after they had conveyed their claims.

Q. Who were they?

A. That is Mr. and Mrs. Myers and Mr. Bonney. There may have been some of the others, but I don't remember it now.

Mr. GORDON.—I offer this in evidence.

Said blank form of affidavit was thereupon marked by the Reporter as Exhibit 63.

Mr. GORDON.—Now, let us go back, Mr. Steffey, to the first talk you had with Mr. Dwyer, before you located any of these entrymen. Tell us what your arrangement with Dwyer was, relative to procuring entrymen to locate on timber claims?

Mr. TANNAHILL.—We object to that as a repetition.

WITNESS.—Well, I can't remember when we first talked about this matter.

Mr. GORDON.—Q. Now, any conversation you had with him relative to procuring entrymen on timber claims, before you entered any of them?

A. I don't remember whether it was the first one or the second one.

Q. Well, any conversation, so long as it is a conversation with [1602—1272] him prior to procuring any entrymen to enter.

A. Well, I couldn't state when that was.

Q. Now, just tell the conversation—not the dates—I am saying the period.

A. Well, the first time was the Charles S. Myers

(Testimony of Harvey J. Steffey.)

would get timber if they had the opportunity that he had; that he was getting a third interest, and all his expenses paid.

Q. Now, did he tell you with whom he was interested, and from whom he was getting this third?

A. Yes, sir.

Q. Who did he tell you?

A. The bank—the Lewiston National Bank.

Q. Well, did he name the bank, or did he name any persons?

A. Well, I think possibly he did—Kester and Kettenbach— [1604—1274] because I remember asking him if he had had any trouble in getting the Lewiston National Bank interested in this, and he said, “Not a bit.”

Q. Well, what else did he say? Did he tell you why?

A. Well, he said he had made some deal, I think up in the Collins District, or in the St. Maries country, and they had made a nice little piece of money out of it.

Q. Now, who is “they”?

A. Kester and Kettenbach, or the Lewiston National Bank.

Q. And was Dwyer in on that? A. Yes, sir.

Q. And did Dwyer tell you that? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. BABB.—And the Bank objects to that, because it is a statement made outside of its presence, or the presence of any of its officers.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. Mr. Steffey, I understood you to say that you paid for all the advertising for these eight claims that have been referred to?

A. Yes, sir.

Q. And who did you pay?

A. I usually made out a check and gave it to Colonel Todd of the *Pierce City Miner*.

Q. And was that the paper that the advertisements were made in? A. Yes, sir.

Q. Mr. Steffey, I show you a check dated February 5, 1906, drawn on the Lewiston National Bank to the order of William J. Todd in the sum of \$10.00, signed H. J. Steffey. Do you know whether that check was given to Mr. Todd in payment of an advertising bill of one of these claims?

A. No; I couldn't say. There was other transactions between Mr. Todd and myself. I couldn't—
[1605—1275]

Q. You don't know whether it is or not?

A. Not that check; no.

Q. Now, will you look through these other checks there and call the dates, and any one that you know of that you used for that purpose. If you can't remember it, just say so.

A. Yes, sir; there is one on March 19th.

Q. Signed H. J. Steffey? A. Yes, sir.

Q. To W. J. Todd, for \$16.00?

A. Yes, sir. There is another one of March 23d, for \$16.00.

Q. That is also payable to Colonel Todd?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. Here is another one of April 24th, for \$16.00?

A. Yes, sir.

Q. And that is also payable to W. J. Todd, and signed H. J. Steffey? A. Yes, sir.

Q. And here is one of April 20th, for \$8.00, payable to W. J. Todd, and signed H. J. Steffey?

A. Yes, sir. That is all that I can remember that I gave him for publication.

Mr. GORDON.—All these checks are drawn on the Lewiston National Bank, and we offer the four checks in evidence.

Mr. TANNAHILL.—The defendants severally object to the admission of the checks in evidence in so far as they relate to Bills 388 and 406, upon the ground that the entries are not involved in these two particular actions, and they are irrelevant and immaterial.

The Reporter thereupon marked said checks as Exhibits 64, 65, 66 and 67.

Mr. GORDON.—Q. Now, do you know what these other two checks were for that you hold? [1606—1276]

A. One of them was in part payment for his services in going out to Mr. Myers' place and making out the deed, or the affidavit, on their claims, and I couldn't say which.

Q. Which check was that?

A. Well, they are both for \$20.00.

Q. Do you remember giving him a \$20.00 check for going out there to Mr. Myers's? That one is dated December 21, 1906, and this one is dated March 10, 1907.

(Testimony of Harvey J. Steffey.)

A. I think it was the one dated December.

Mr. GORDON.—We will offer them both in evidence, anyhow. You signed both of these checks and delivered them to Mr. Todd?

A. Yes, sir

Said checks were thereupon marked by the Reporter as Exhibits 68 and 69. [1607—1277]

Mr. GORDON.—Q. Mr. Steffey, did you ever have any talk with Mr. Kester or Mr. Kettenbach relative to giving you authority to draw on the bank, whether or not your account was good or not, in putting up the money for these several entrymen?

A. Only once, with Mr. Kettenbach.

Q. Did you ever have any with Mr. Kester?

A. No, sir.

Q. Now, what was this talk about?

A. Well, this was about the money for the proving up of Mr. Loney and Mr. Jolly. I had spoken to—Mr. Dwyer wasn't in Lewiston at that time, and I spoke to Mr. Kettenbach about it, and he said he would make arrangements to have the money at the Idaho Trust Company, and so I paid no more attention to it, and told Mr. Jolly and Mr. Loney to go to the Idaho Trust Company and tell them who they were, and they would get their money. And after while I went around and saw them in front of the building and asked them what was the matter, and they said the man in there didn't know anything about it, and I stepped inside and spoke to Mr. Smith and—

Q. That was Mr. Smith, the Secretary of the Idaho Trust Company?

(Testimony of Harvey J. Steffey.)

A. Yes, sir. And asked him if there had been any arrangements made to leave any money there for Mr. Loney and Mr. Jolly, and he said there hadn't, and I went over to the Lewiston National Bank and saw Mr. Kettenbach—he was there—and he said he couldn't make arrangements with Mr. Smith, but he would get it, and told me to make out my check for the amount, and I did, and I got the money and he gave it to me.

Q. Did you tell him anything about the arrangements you had with Dwyer?

A. Mr. Kettenbach?

Q. Yes. A. I did not. [1608—1278]

Q. Did he know what you wanted the money for?

A. Yes, sir.

Mr. TANNAHILL.—We object to that and move to strike out the answer, on the ground that the witness can't know what Mr. Kettenbach knew.

Mr. GORDON.—Q. How did you know that Mr. Kettenbach knew about it?

A. Well, he was familiar with everything I was doing, and told me to get the money, and knew what I wanted it for, and knew these people were there to make their final proof that day.

Mr. TANNAHILL.—We move to strike out the statement as a conclusion and not a statement of fact. He can't know what Mr. Kettenbach knew or thought or anything of the kind.

Mr. GORDON.—Q. How did you know that he knew that, Mr. Steffey?

A. He let me have the \$900.00 on my personal check; that is one reason I know.

(Testimony of Harvey J. Steffey.)

Q. Was there any action of his that indicated that he knew?

Mr. TANNAHILL.—We object to the question upon the ground that it calls for a conclusion of the witness and not a statement of fact, and incompetent, irrelevant and immaterial.

A. The fact that he told me he would make arrangements to have the money left at the Idaho Trust Company led me to believe that he knew what I was doing, and I also told him about the claims and who they were, and when final proof was to be made.

Q. How long was this before final proof?

A. I think it was about two weeks, if I am not mistaken.

Q. I show you a check, dated March 23, 1906, drawn on the Lewiston National Bank, payable to the order of self, for \$356.00, signed H. J. Steffey. Did you sign that check? A. Yes, sir.

Q. Did you receive the money on it? [1609—1279] A. I did.

Q. And do you know what that money was drawn for? A. No, I couldn't say positively.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 69A.

Mr. GORDON.—Q. I show you a check, dated March 23, 1906, signed H. J. Steffey, payable to the order of the Lewiston National Bank, drawn on the Lewiston National Bank, for \$508.47. Did you sign that check? A. Yes, sir.

Q. Do you know what that check was drawn for?

(Testimony of Harvey J. Steffey.)

A. I can't remember positively, no.

Q. Have you any recollection of what it was for?

A. I think I have; yes.

Q. What is your best recollection?

A. That it was a balance that we straightened up; after these entrymen would convey their claims to Kester and Kettenbach there would be an account against me there for the checks that I drew to pay them, and I think this was a kind of a balance to square it up, I think.

Q. Wasn't that, however, before the deeds were made, Mr. Steffey? The deeds weren't made for several months after that. That is in 1906. The deeds were made after March, 1906. The Myers claim was deeded March 21, 1906.

A. Well, this had something to do with the Myers claim. There was a note that Mr. Myers gave the Lewiston National Bank for something over \$800.00, and this was something in connection with that, I am quite satisfied.

Q. Was the \$800.00 note of Myers in connection with the entry at all? A. Yes, sir.

Q. Did he give you a note for \$800.00 for his and his wife's claim? [1610—1280]

A. No; just for his own claim, the claim he filed on.

Q. I mean, was that in payment for the money you had advanced his wife and him?

A. Not his wife; just himself.

Q. Did you let him have \$800.00 on his claim?

A. Well, this \$800.00 was in connection with the relinquishment that Mr. Dwyer got from the Government, which amounted to something like \$300.00

(Testimony of Harvey J. Steffey.)

or \$400.00, and what Mr. Myers was to get out of it, and what I was to get out of it was added to that, amounting to something like \$800.00; I have forgotten the exact amount.

Mr. GORDON.—I offer that check, dated March 23, 1906, for \$508.47, in evidence.

Said check was thereupon marked by the stenographer as Ex. 79.

Mr. GORDON.—Q. I show you a check, dated June 12, 1906, payable to myself, in the sum of \$900.00, drawn on the Lewiston National Bank, signed H. J. Steffey. Did you sign that check?

A. Yes, sir.

Q. Do you know what that was for?

A. Well, that was for the money to give these entrymen so that they could pay the Government fee on the land.

Q. Do you know which entrymen it referred to?

A. No, I couldn't say without looking it up.

Q. It was one of the entrymen?

A. One of the entrymen, yes.

Q. That you have been testifying to?

A. Yes, sir.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70A.

Mr. GORDON.—Q. I show you a check, dated June 19th, 1906, payable to myself [1611—1281] drawn on the Lewiston National Bank, in the sum of \$900.00, signed H. J. Steffey. Did you sign that check? A. Yes, sir.

Q. Was that for the same purpose that the other

(Testimony of Harvey J. Steffey.)

one was that you identified? A. Yes, sir.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70B.

Mr. GORDON.—I show you a check, dated January 7, 1907, to Harvey J. Steffey, on the Lewiston National Bank, in the sum of \$50.00, signed H. J. Steffey. Do you know what that \$50.00 was for, and did you sign that check?

A. I signed the check, but I don't remember what use I made of the money.

Mr. GORDON.—I offer the check in evidence.

Said check was thereupon marked by the stenographer as Ex. 70C.

Mr. GORDON.—Now, look through these other checks, and see if you know what any of them were given for. If you don't, I won't offer them in evidence.

A. There is only one—

Q. What is the date of it?

A. Dated April 3d, 1907.

Q. What is the sum?

A. Four hundred and fifty dollars. That was given to some entryman.

Q. For final proof?

A. For the final proof money.

Q. You signed that check? A. Yes, sir.

Mr. GORDON.—We offer it in evidence.

Said check was thereupon marked by the stenographer as Ex. 71. [1612—1232]

Mr. TANNAHILL.—We object to the checks in so far as they relate to bills No. 388 and 406, upon the

(Testimony of Harvey J. Steffey.)

ground that they are irrelevant and immaterial, the entries not being involved in these two particular actions.

Mr. GORDON.—Q. Mr. Steffey, at the time you had your first talk with Mr. Dwyer did you know that the Government agents were investigating the land transactions of Kester, Kettenbach, and Dwyer?

A. No, I did not.

Q. You didn't? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Steffey, where did you say you lived prior to the time you removed to Idaho?

A. When I moved to Idaho?

Q. Yes. Where did you live before you moved to Idaho? A. California.

Q. How long had you lived in California?

A. Well, with the exception of when I was away from there, all my life.

Q. What town was you born in, in California?

A. I wasn't born in California.

Q. Where was you born?

A. In Adamstown, Pennsylvania.

Q. How long did you live there?

A. Well, I couldn't say.

Q. In what year was you born?

A. In 1858.

Q. Where did you go from Adamstown?

A. Well, I don't know. [1613—1283]

Q. How long did you live at Adamstown?

A. I don't know.

(Testimony of Harvey J. Steffey.)

Q. Haven't you any idea how long you lived there?

A. I have not.

Q. Did you leave there before you was grown?

A. I think I did, yes.

Q. How long before you reached the age of twenty-years was it that you left there?

A. I couldn't say.

Q. Under what circumstances did you leave there?

A. I suppose I left there with my parents.

Q. Where did your parents move to?

A. They moved to Corry.

Q. What particular town?

A. Corry, Pennsylvania.

Q. The same State? A. Yes, sir.

Q. How long did they live there?

A. Well, I couldn't say.

Q. Do you know in what year they moved to that town? A. No, I do not.

Q. Where did they move to next?

A. Well, I don't think they moved anywhere next; my mother stayed there.

Q. She stayed there? A. Yes, sir.

Q. Was you with them all this time? Did you go with them when they moved?

A. I think I did.

Q. You think you did. Don't you know you did?

A. Well, no, not exactly. [1614—1284]

Q. Now, what particular reason have you for not knowing whether you did or not?

A. Well, some of our children were left with some of my mother's folks and some with my father's folks.

(Testimony of Harvey J. Steffey.)

Q. And you don't know what was done with you, is that right? A. Part of the time, no.

Q. What part of the time is it that you don't know anything about?

A. Well, from the time I was born up until the time that we moved to Corry.

Q. About how many years was that?

A. I couldn't say.

Q. Haven't you any idea? A. No, I haven't.

Q. Give us your best impression about it.

A. Well, probably eight or nine years.

Q. About eight or nine years? A. Yes.

Q. Then, where did you go next?

A. From where?

Q. From your last place of residence. I don't remember the last town you say your folks moved to.

A. Corry?

Q. Yes. A. California.

Q. What year did you go to California?

A. I think it was in '68 or '69, somewhere along there.

Q. Where did you live in California?

A. Well, I lived in several places in California.

Q. Well, when you first went to California where did you go to? A. I went to Santa Clara.

Q. How long did you live there? [1615—1285]

A. I think perhaps about a year.

Q. In what business was you engaged there?

A. I wasn't in any business; I was just simply living there.

Q. When did you leave there?

(Testimony of Harvey J. Steffey.)

A. Well, I couldn't say exactly.

Q. Have you any idea when you left there?

A. Not the date, no.

Q. About when was it?

A. It was along in the early '70's.

Q. Where did you go to? A. San Jose.

Q. What did you do there?

A. I went to school there.

Q. How long was you in school there?

A. Probably about a year.

Q. Then, where did you go? A. Oakland.

Q. How long did you stay there?

A. Oh, about a year perhaps.

Q. What was your address in Oakland?

A. I lived with a family by the name of Degolia there, on Webster street.

Q. Do you remember the number?

A. No, I do not.

Q. How long did you live there?

A. I think I lived with that particular family about a year.

Q. About a year? A. Yes, sir.

Q. In what business was you engaged?

A. Going to school.

Q. Where did you go after you left there?

A. I think I went to Utah. [1616—1286]

Q. What part of Utah?

A. Along the line of the Central Pacific Railroad.

Q. What town? A. No particular town.

Q. What sized town was it at that time?

A. There was no particular town that I went to.

(Testimony of Harvey J. Steffey.)

Q. That was your postoffice, was it? A. No.

Q. What was your postoffice?

A. I had no postoffice.

Q. You had no postoffice? A. No.

Q. Where did you get your mail?

A. From the party that I was with.

Q. The party you was with? A. Yes, sir.

Q. Who was you with? A. A surveying party.

Q. What was you doing?

A. I was with them, helping them in several ways.

Q. What surveying party was it?

A. It was a surveying party that was doing surveying for the Central Pacific Railroad.

Q. How long was you engaged in that business?

A. All one season, until late in the winter.

Q. Where did you go then?

A. I went back to California.

Q. What part of California?

A. I don't remember exactly where.

Q. Haven't you any idea where you went then?

A. No, I haven't. I went to where my father was.

Q. How long did you stay there? [1617—1287]

A. Well, I couldn't say; I was with him from then on until—

Q. Now, when was it that you went back to where your father was? A. I couldn't give you the date.

Q. About when was it?

A. In the early '70's some time.

Q. In the early '70's? A. Yes, sir.

Q. Now, then, what did you do from that time on to the next time you can remember?

(Testimony of Harvey J. Steffey.)

A. I was with him; I don't remember of doing much of anything only being with him.

Q. How long was you with him?

A. I was with him five or six years.

Q. Five or six years? A. Yes, sir.

Q. Then, where did you go?

A. I think I went to work firing on the Central Pacific Railroad.

Q. How long did you work at that work?

A. About eighteen months.

Q. About eighteen months? A. Yes, sir.

Q. What was your run?

A. From Terrace, Utah, to Ogden.

Q. Then, what did you do?

A. I was working on the Utah & Great Northern for a while.

Q. What did you do there? A. Braking.

Q. How long did you work at that work?

A. Perhaps a little over a year.

Q. Then, what did you do?

A. I came to Helena, Montana.

Q. What year was it that you came to Helena?

[1618—1288]

A. I think it was in the summer of '82.

Q. In the summer of '82? A. Yes, sir.

Q. What did you do there?

A. I worked in the yards.

Q. What yards? A. Northern Pacific.

Q. Northern Pacific? A. Yes, sir.

Q. How long did you work there?

A. Probably four or five months.

(Testimony of Harvey J. Steffey.)

Q. Then, what did you do?

A. I went to Idaho.

Q. What part of Idaho?

A. Pend d'Oreille Lake.

Q. What did you do there?

A. Almost anything I could get to do.

Q. How long did you remain there?

A. Ever since, with the exception of the time I have been down here.

Q. I see. You wasn't away any place else?

Q. Only for short periods.

Q. For short periods. Can you tell us anything about any particular work you did?

A. Yes, sir.

Q. What did you do?

A. Prospecting, trapping, mining.

Q. Anything else? A. Nothing.

Q. And you remained there until you came down here? A. Yes, sir.

Q. Are you a married or single man? [1619—1289] A. Single.

Q. You never have been married? A. No, sir.

Q. Mr. Steffey, when did you say you came to Idaho?

A. It was in the latter part of '82, I think.

Q. The latter part of '82. When did you come down to this country?

A. That is, to the northern part of Idaho. I was in the southern part of Idaho in '80, I think.

Q. In '80? A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. When did you come down to Nez Perce County? A. The spring or summer of 1902.

Q. The spring or summer of 1903, you say?

A. '02.

Q. What did you do down here?

A. Well, I was,—originally I came prospecting, and then I got interested in the timber business.

Q. Yes. What part of this section of the country was you working in? A. North of Pierce.

Q. How long did you work there?

A. Well, practically ever since I came there.

Q. Ever since you came there? A. Yes, sir.

Q. And when did you say you got acquainted with Mr. Dwyer?

A. I think it was some time in 1904.

Q. Some time in 1904? A. Yes, sir.

Q. And under what circumstances did you get acquainted with him?

A. He was arrested by the United States marshal.
[1620—1290]

Q. And that was about the time these timber land matters came up?

A. Well, I don't think,—I hadn't heard of any timber land matters previous to that.

Q. Where was that? A. In Lewiston.

Q. Arrested by the United States marshal?

A. Yes, sir.

Q. When was it?

A. I think it was some time in 1904; I couldn't say,—some time in January or February or March.

Q. Do you know about what time it was?

(Testimony of Harvey J. Steffey.)

A. About what time?

Q. Yes; what time of the month it was.

A. No, I do not.

Q. Do you know what he was charged with?

A. Yes, sir.

Q. What was it?

A. For perjury, I think.

Q. For perjury. You say that wasn't in connection with the land matters?

A. Well, I said I hadn't heard of any land matters at that time.

Q. Well, it was when these charges were first,—when the indictments were returned by the grand jury, was it not? Wasn't it subornation of—

A. I don't recollect of any—

Q. Wasn't it subornation of perjury?

A. No, I think not.

Q. And you don't know of any other charge that he was arrested on except these land matters, do you?

A. Well, that wasn't in connection with these land matters.

Q. That wasn't? It was in connection with land matters, wasn't it? [1621—1291]

A. It was in connection with land, yes.

Q. When did you first begin to work for Mr. Dwyer?

A. It was some time in the fall of 1904, I think.

Q. In the fall of 1904? A. Yes, sir.

Q. And what was you doing?

A. I was running compass for him.

(Testimony of Harvey J. Steffey.)

Q. And where was you doing that work?

A. A little north and east of Pierce.

Q. Now, did you do any other work for him at that time? A. No, not at that time.

Q. Now, you say, Mr. Steffey, that you and Mr. Dwyer had a conversation in regard to locating some people on these timber claims that you have referred to as the Myers and Jolly claims? A. Yes, sir.

Q. Now, where did you have your first conversation in regard to these locations?

A. Well, I don't recollect where it was.

Q. Well, now, you had gone and cruised out the claims, had you? A. Yes, sir, I had.

Q. You was in the locating business?

A. Yes, sir.

Q. And you had been in the locating business for some time?

A. Not in particular, no; I had located a few people before that.

Q. And you had helped them to get the money to make final proof, had you not?

A. None before those that I spoke to Mr. Dwyer about.

Q. None before those? A. No.

Q. You did some after that, did you?

A. Yes, sir. [1622—1292]

Q. Quite a number of them?

A. Only in connection with Mr. Dwyer.

Q. Well, now, who else did you locate?

A. I located Mr. Rowland.

Q. What became of his claim?

(Testimony of Harvey J. Steffey.)

A. I couldn't say.

Q. Who else did you locate?

A. A brother in law of his; I have forgotten his name; I think it was Martin, though.

Q. Did you help him get the money?

A. I did not.

Q. Did you locate Mr. and Mrs. Gaffney?

A. I did.

Q. And Mr. and Mrs. Bowman? A. Bowman?

Q. Yes.

A. I think not; I don't recognize the name.

Q. Did you locate anyone else?

A. I located Miss Rundell.

Q. Who else? Did you locate Mr. and Mrs. Burrows? A. Burrows?

Q. Yes.

A. I did, but they didn't prove up on their claims.

Q. Why didn't they prove up?

A. They couldn't get the money.

Q. You tried to get the money for them, did you?

A. Yes, sir; through Mr. Dwyer and Mr. Kester.

Q. And you didn't get it? A. No.

Q. And you located the two Lane claims?

A. Yes, sir.

Q. Those are the ones you testified about, are they?

[1623—1293] A. Yes, sir.

Q. What became of those claims?

A. I think Mr. Dwyer bought them.

Q. And you located Charles Irwin?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And did you help him get the money?

A. I did.

Q. What became of his claim? A. I got it.

Q. And had it deeded to yourself, did you?

A. Yes, sir.

Q. Did you locate Mrs. Wiggin? A. I did.

Q. Did you help her get the money?

A. I did not.

Q. Did you locate Miss Rundell?

A. I located Miss Rundell.

Q. Did you help her get the money?

A. I did not.

Q. Did you locate Doctor Keener?

A. Keener?

Q. Yes. A. I don't remember it.

Q. Did you locate a fellow by the name of Keenan?

A. Keenan?

Q. Yes. A. No.

Q. You don't know anything about his claim?

A. I do not.

Q. You didn't buy his claim? A. Keenan?

Q. Yes. [1624—1294] A. No.

Q. Now, what was the conversation you had with Dwyer regarding these Myers and Bonney and Jolly claims that you speak of, the first conversation you had regarding it?

A. I told him about these lands that I had cruised out, and he told me to get somebody and locate on them and tell them we would give them \$200.00 after they proved up on them.

(Testimony of Harvey J. Steffey.)

Q. And that is all that was said?

A. Well, yes, in particular about that.

Q. Now, when was that?

A. I couldn't say when it was, the exact date.

Q. Then, what did you do?

A. I went up and located them.

Q. Dwyer told you that he would give them \$200.00 over and above expenses?

A. Yes, sir.

Q. Had Dwyer gone and looked at the claims?

A. Some of them he did.

Q. What claims did he go to look at?

A. He went to look at Mrs. Loney's and Mrs. Jolly's claims.

Q. Did he know that Mrs. Loney and Mrs. Jolly were going to take those claims?

A. I think they had already taken them when he looked at them.

Q. Hadn't they already filed on them?

A. Yes, sir.

Q. Hadn't they made their final proof too?

A. I don't think they had.

Q. To refresh your recollection, wasn't it after they made final proof and just before they made the deeds that Mr. Dwyer went up and looked at them?

A. Possibly, but I don't recollect it. [1625—1295]

Q. That may have been the case?

A. It may have been.

Q. Didn't he tell you that the Jolly claims were poor claims and he didn't want to buy them?

(Testimony of Harvey J. Steffey.)

A. Well, I had already told him that before we located them on it.

Q. After he and you went up and looked over those claims he told you they were poor claims and he didn't want to buy them?

A. No, he didn't say anything about not wanting to buy them.

Q. Didn't you go down and see Kester about it, and explain to Kester that some of them were poor claims and others were good ones, and he had better take them?

A. No, I never told Mr. Kester that.

Q. Didn't you tell Dwyer that?

A. No, I don't think I did.

Q. You never told him that some of them were not very good, but that others were good, and they would average up all right?

A. Possibly I may have told him that; very likely I did.

Q. And in that way he concluded to take the claims?

A. I don't know what he concluded to do.

Q. But he did finally take them?

A. He took them.

Q. What did he pay you for them?

A. He didn't pay me anything for them.

Q. What did he pay for the claims?

A. He paid these people \$200.00; they all got the \$200.00.

Q. You had already paid that, according to your testimony.

(Testimony of Harvey J. Steffey.)

A. No, I hadn't already paid that.

Q. Well, it was charged up to your account, wasn't it? A. Well, I don't know whether it was or not.

Q. You had given your checks for it?

A. Well, I had given my checks, yes.

Q. And they were paid, the checks were paid, and they were returned [1626—1296] to you, charging the same as any other checks you drew on the bank, were they not?

A. Yes, sir.

Q. Then, they must have been charged up to your account, were they not?

A. Well, this money wasn't paid finally until the lands were deeded over to Kester and Kettenbach.

Q. Well, you drew the money out, didn't you?

A. I did.

Q. On your checks? A. Yes, sir.

Q. And passed it over to these entrymen, is that right? A. The entrymen got their \$200.00.

Q. Well, now, then, how did you get your money back? How was your settlement made?

A. I didn't get any money back.

Q. How was your settlement made?

A. The settlement was made when the—I don't know how they did make the settlement. I never paid any attention to my checks afterwards; I suppose they straightened those things up themselves.

Q. Well, you got your checks back, didn't you?

A. Yes.

Q. When did you first begin to pay some attention to your checks?

(Testimony of Harvey J. Steffey.)

A. Well, I always paid attention to my checks.

Q. You always paid attention to your bank account? A. Usually, yes.

Q. And you was depositing money and checking it out? A. When I had money.

Q. And you frequently overdrew on the bank, did you not? A. Yes, sir.

Q. And frequently borrowed money from the bank? A. Occasionally, yes. [1627—1297]

Q. Now, then, the account was checked on for this money just the same as any other check you drew on the bank, was it not? A. Yes, sir.

Q. Didn't you pay some attention to your bank account, how it stood and how this settlement was made?

A. Every once in a while I would get a statement, yes.

Q. Then, you paid some attention to it, did you not, when you got the statement? A. Oh, yes.

Q. Now, this Jannie Myers claim, the consideration in the deed was \$450.00. That is just about what the claim brought, is it not?

A. No; the consideration, I think, was more than \$450.00; that is what he paid the Government for it.

Q. That wasn't a full hundred and sixty acres, was it? A. The Charles Myers claim was.

Q. The Jannie Myers claim was eighty acres?

A. That was eighty acres, yes.

Q. You didn't pay \$450.00 for eighty acres, did you?

A. That was the agreement. Mr. Dwyer said he

(Testimony of Harvey J. Steffey.)

would pay \$450.00 for the claim.

Q. Four hundred and fifty dollars for the claim?

A. Yes.

Q. That was more than the claim cost, more than you have testified that it cost. What went with the balance?

A. Well, I don't know as I testified that the claim—

Q. Well, now, wasn't your account credited with \$450.00 for that eighty acres of land?

A. No, I never saw anywhere on my account where I was credited with \$450.00 for that eighty acres.

Q. Wasn't it credited \$850.00 for the Jolly claim?

A. There is nowhere in my accounts that there is any notice of that kind. [1628—1298]

Q. How is that?

A. There is nowhere in any of my accounts that there is any notice of that kind.

Q. Well, \$850.00 was more than it cost, more than the cost of the claim, including the \$200.00 paid to the entryman, was it not? A. Yes, sir.

Q. Now, you stated that Jannie Myers was to have \$200.00. A. No, I did not.

Q. What was she to have?

A. I think she was to have,—well, I think that was left to me, that claim. Mr. Dwyer said he would give \$450.00 to anybody I would locate on it, and if I remember right I gave Mrs. Myers \$135.00 or \$145.00.

Q. Then, you had this agreement regarding the Jannie Myers claim, you had a different agreement regarding the Jannie Myers claim from what you did

(Testimony of Harvey J. Steffey.)

regarding the others, is that correct?

A. No. Well, yes, it was different; that is true.

Q. Well, then, did you have any different agreement as to the Jolly claim?

A. From Mrs. Myers' claim?

Q. Yes. A. Yes.

Q. What was the difference?

A. The difference was that these entrymen was to get a straight \$200.00, that I was to guarantee that they would make \$200.00 out of their claims, and there was no other consideration in those mentioned whatever.

Q. Now, Mr. Steffey, wasn't the conversation you had with Mr. Jolly that you would insure him that you would sell the claim for him after he made final proof for enough so that he would get at least \$150.00 or \$200.00, over and above his expenses? [1629—1299]

A. No, sir.

Q. You never had any such conversation as that with him? A. No, sir.

Q. Now, didn't you tell Clinton E. Perkins that you would sell his claim for him so that he could make at least \$200.00 over and above his expenses?

A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. Then Mr. Perkins' evidence wherein he stated that he had an understanding with you that you would sell the claim for him after he proved up for at least \$200.00 over and above all the claim cost him is not true, is it?

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—I object to that as argumentative.

A. I don't know; I never heard any of his evidence.

Mr. TANNAHILL.—Q. Then, if he did testify to that, it isn't true? A. It isn't true.

Mr. GORDON.—I object to that as argument.

Mr. TANNAHILL.—Q. Mr. Steffey, you say you had Mr. Perkins sign a deed? A. Yes, sir.

Q. And you told Mr. Perkins that you couldn't make any agreement to buy the claim or sell the claim for him at that time, didn't you?

A. Well, I don't recollect now exactly what I did tell Mr. Perkins. Mr. Perkins understood that he was to get \$200.00 clear of all expenses for the claim.

Q. Well, now, Mr. Steffey, I am not asking you for your conclusion, or what Mr. Perkins understood.

A. Very well.

Q. I am asking you what was said. Didn't you tell Perkins that you couldn't make any agreement to buy the claim at that time, or to sell [1630—1300] it for him at that time?

A. I don't think I did.

Q. Will you swear that you didn't?

A. To the best of my knowledge, I would, yes.

Q. You know whether you did or not, don't you?

A. Well, not exactly.

Q. Did you have any such conversation as that with him at all? A. I don't think I did.

Q. You never told him you couldn't make an agreement with him?

A. Well, yes, I may have told him I couldn't make an agreement, but there was no such language used

(Testimony of Harvey J. Steffey.)

as "sell the claim."

Q. But you did tell him you couldn't make an agreement with him? A. I think I did.

Q. You tried to make him understand that?

A. Yes, sir.

Q. That you couldn't have an agreement with him?

A. Yes, sir.

Q. And you so understood, didn't you?

A. Well, no, I didn't understand that.

Q. Do you mean to say that you was trying to lead Mr. Perkins into committing perjury and not knowing it?

A. Well, no, I didn't want him to commit perjury.

Q. You didn't want him to commit perjury?

A. No.

Q. Then, the arrangements you made with Mr. Perkins was such that you made him understand that it didn't amount to an agreement, is that right?

A. Well, he understood it as well as I did. I don't know what I made him understand, but he understood it as well as I did.

Q. He understood that he didn't have any agreement, just as well as you did, didn't he? [1631—1301]

A. Well, I don't know what he understood.

Q. But you remember that you did tell him you didn't have an agreement, is that right? A. Yes.

Q. And you also had him sign an affidavit, Defendants' Exhibit "D," for identification, as follows:

[Defendants' Exhibit "D."]

“State of Idaho,
County of Nez Perce,—ss.

Clinton E. Perkins, being duly sworn, deposes and says: That he is the identical party who made entry of the lands hereinafter described under the Stone and Timber Act providing for such entry. That at no time prior to the entry or prior to the final proof did the affiant have any agreement or understanding express or implied, that said entry was being made or said title being acquired for the benefit or advantage, directly or indirectly, of any person, company, or corporation. That said entry was made, and said title acquired, solely for the exclusive use and benefit of the affiant. That prior to the entry affiant had made personal examination of said land and here makes oath that to the best of his belief the same did not and does not contain any valuable deposit of gold, silver, cinnabar, copper or coal and was not mineral land under the terms of said act. That the sale now being negotiated is not the result nor made in pursuance of any agreement or understanding, express or implied, had at any time prior to final proof upon the hereinbelow described lands, and that the said purchaser in no wise nor in any way had any interest in or to said lands, or the title thereto, directly or indirectly, prior to the negotiations for the present sale and that such negotiations were commenced subsequent to the final proof and the acquisition of title by this affiant from the Government.

(Testimony of Harvey J. Steffey.)

That the lands referred to are described as follows, to-wit: Lots number three and four, Section three, Township 36 North, Range 5 East, Boise Meridian; the south half of the Southwest quarter of Section 34, Township 37 North, Range 5 East, Boise Meridian. [1632—1302]

CLINTON E. PERKINS.

Subscribed and sworn to before me this 28th day of February, A. D. 1907.

[Notarial Seal]

WILLIAM J. TODD,

Notary Public, in and for Nez Perce County, Idaho."

You had him sign that affidavit, did you?

A. I think so.

Q. Is that affidavit true?

A. As far as it went, I guess it is, if he signed it.

Q. You say the affidavit is true, do you?

A. That he signed it, yes.

Q. Yes, sir, he signed the affidavit and swore to it. You can examine it if you like (handing paper to witness). Now, Mr. Steffey, who did you first talk to regarding the circumstances of your acquiring this land? What official of the Government did you talk to first? A. Acquiring which land?

Q. This Perkins land. A. I didn't acquire it.

Q. Well, you had something to do with it, about locating him on it, and the way it was acquired by Kester and Kettenbach and Dwyer?

A. I don't know as I ever spoke to any Government official about acquiring it.

Q. How did you first get in touch with the Government officials regarding it?

(Testimony of Harvey J. Steffey.)

A. You mean in regard to this investigation?

Q. Yes.

A. Why, if I remember right, I received a note at the Bollinger Hotel signed by Mr. Smith and Mr. Watt, asking me to call on them; I think that was the first.

Q. And when was that? [1633—1303]

A. Well, I don't know.

Q. You had had some trouble with Mr. Dwyer shortly before that, hadn't you, and Mr. Kester and Mr. Kettenbach?

A. I never had any trouble with Mr. Kettenbach and Mr. Kester.

Q. You had some trouble with Mr. Dwyer, did you not? A. No personal trouble.

Q. You and he had a disagreement, did you not?

A. Well, yes, I think we did, about this land matter.

Q. About the land matter? A. Yes.

Q. Which land did that refer to?

A. That referred to these claims that I located these people on.

Q. Didn't you have some trouble over a claim you had bought for them that you had cruised and given them an estimate of a large amount of timber, and when they investigated it, the timber wasn't on the land? Didn't you have some trouble about that?

A. I think not.

Q. Are you sure you didn't? A. Yes, sir.

Q. Don't you remember that you reported on the Keener claim four million feet of timber, and after

(Testimony of Harvey J. Steffey.)

it was cruised there was only about a hundred and thirty thousand feet, and they had bought it on your estimates and recommendation and given \$1,200.00 for it? A. No, sir, I don't remember.

Q. You don't remember anything of the kind?

A. No, sir.

Q. Didn't Mr. Dwyer tell you about that time that someone would have to make that loss good or have to stand that loss? A. No.

Q. Nothing of that kind?

A. No, sir. [1634—1304]

Q. But you and Mr. Dwyer did have some trouble before you reported to the Government officials regarding this condition, didn't you?

A. None in particular, only he attempted to sell my part in a barn.

Q. Was that all the trouble you had?

A. Not in particular, only the foul language that he would use occasionally.

Q. Is that all the trouble you had?

A. That is all.

Q. Didn't you testify that you and he had some trouble over these particular claims in question now?

A. No, sir.

Q. You had no trouble over them at all?

A. None whatever.

Q. You had no disagreement over them?

A. Not in particular, no.

Q. You had no trouble with Kester and Kettenbach regarding it? A. None whatever.

Q. Didn't you have a conversation with Clinton

(Testimony of Harvey J. Steffey.)

E. Perkins wherein you told him that if he would come down and testify for the Government he had a good chance to get that land back? A. No, sir.

Q. Didn't you tell him that Dwyer and Kester and Kettenbach had given you dirt and you was going to even up with them? A. No, sir.

Q. You never had any such conversation as that?

A. No, sir.

Q. Didn't you tell Mr. Perkins, some time during the summer of 1907 or the spring of 1908, when you went up to see Mr. Perkins about his appearing and testifying for the Government in these particular cases, that these fellows, meaning Dwyer, Kester and Kettenbach, or some of them, had done you dirt and you was going to even up with them, or words in substance and to that effect? [1635—1305]

A. I did not.

Q. Did you ever have any such conversation as that? A. I did not.

Q. Did you have any such conversation as that with Frank J. Bonney? A. No, sir.

Q. Did you talk to either of these men about appearing as a witness for the Government?

A. I did.

Q. At whose request did you go to see them?

A. At nobody's request.

Q. Of your own volition, did you? A. Yes, sir.

Q. Who did you talk to?

A. I talked to Mr. Loney and Mr. Jolly and Mr. Perkins and Mr. Bonney and all those people I went and located I went to see.

(Testimony of Harvey J. Steffey.)

Q. What did you tell Mr. Perkins?

A. I told him in case he was called in this investigation to tell them the exact truth in everything that occurred, and not in any way to try to shield me.

Q. You didn't care for yourself?

A. I wanted them to tell the exact truth, so as not to bring themselves into any trouble.

Q. Why did you think they might bring themselves into any trouble?

A. Well, we were very friendly, good friends, and I didn't want to cause them any trouble or expense that would occur through me.

Q. You didn't want to cause them any trouble?

A. No, sir.

Q. And at the same time you are testifying to a different state of facts to what they are testifying to, and you went over to the grand jury at Moscow and testified to a different state of facts?

A. I didn't know what they testified to. [1636—1306]

Q. Didn't Mr. Bonney tell you, right there, sitting in Mr. Gordon's room, that he had no prior agreement, and that you told him he had no prior agreement?

A. I don't remember of Mr. Bonney being in the room when I was present.

Q. Will you say he wasn't?

A. I think I will; yes.

Q. Will you swear that Bonney never told you that? A. Yes, sir.

Q. Will you swear that Bonney never told you

(Testimony of Harvey J. Steffey.)

that you told him at the time that you talked to him about locating him that you had no agreement with him, and that you couldn't make an agreement with him?

A. If you will just make that statement again, I perhaps may understand it.

The last question was thereupon read by the stenographer.

A. I possibly may have told him that.

Q. To refresh your memory, Mr. Steffey, when you was over at Moscow, you was there attending a session of the grand jury, and Mr. Bonney was subpoenaed there as a witness, in Mr. Gordon's room, and I will ask you if he didn't tell you that he could have gone and sold that land to anyone else that he wanted to and paid you back the money he borrowed from you and you would have had no complaint, and you said, "Yes, I think you could, Mr. Bonney, but I would have been pretty mad about it, but now I wish to God you had?"

A. No, sir, I never said that at all.

Q. But he might have told you at the same time that you told him you had no agreement?

A. I possibly told him that before I located him on the claim.

Q. And you left him with that understanding?

A. I tried to, yes, sir.

Q. But you testified before the grand jury that you did have an agreement with him, is that right?

[1637—1307]

A. Well, I testified to the exact manner that I

(Testimony of Harvey J. Steffey.)

made arrangements with these entrymen.

Q. You didn't hear the evidence of Charlie Myers, did you? A. In what case?

Q. This case here, when he testified the other day?

A. No, sir.

Q. You told him that you couldn't make an agreement with him?

A. I think I told all those entrymen that.

Q. You appeared as a witness for Charlie Myers on his final proof, didn't you?

A. Yes, sir. I think I did, yes.

Q. And when you was asked this question: "Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." Do you remember that?

A. Yes, sir.

Q. Was that answer true or false?

A. I don't think it was quite true.

Q. You knew it was false at the time, did you?

A. Oh, yes.

Q. You knew you was committing perjury when you testified to it, did you? A. Yes, sir.

Q. Then: "Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." You remember of answering

(Testimony of Harvey J. Steffey.)

that, do you? A. I think I did.

Q. Was that answer true or false?

A. It wasn't quite true, no. [1638—1308]

Q. Well, was it true or false? A. It was false.

Q. And you knew it was false at the time, did you?

A. I did.

Q. And that is your signature attached to this final proof of Charles S. Myers, is it?

A. Yes, sir.

Q. You was also a witness on the final proof of Clinton E. Perkins, was you not?

A. I think I was.

Q. I call your attention now to Plaintiff's Exhibit 20, and ask you if that is your signature attached to the final proof testimony of witness Harvey J. Steffey? A. That is my signature.

Q. You signed that, did you?

A. That is my signature, yes.

Q. Did you testify as follows: "Do you know whether the applicant has directly or indirectly made any agreement or contract, or in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." Do you remember that?

A. I think so.

Q. Was that answer true or false?

A. It wasn't true.

Q. You knew it was not true at the time, did you?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. And you also answered: "Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." Do you remember that answer?

A. I think so. [1639—1309]

Q. Was that answer true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. You was also a witness to the final proof of Jannie Myers, was you not? A. I was.

Q. And you signed the testimony of witness Harvey J. Steffey, Plaintiff's Exhibit 11, did you? That is your signature, is it?

A. That is my signature, yes.

Q. Do you remember of testifying as follows: "Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No." You so answered, did you? A. Yes, sir.

Q. Was that answer true or false?

A. It was false.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. "Question 11. Are you in any way interested in this application, or in the lands above described,

(Testimony of Harvey J. Steffey.)

or the timber or stone, salines, mines, or improvements of any description whatever thereon?" To which you answered, "No." Did you so testify?

A. Yes, sir.

Q. Was that statement true or false? A. False.

Q. You knew it was false at the time, did you?

A. Yes, sir.

Q. Now, you also had Jannie Myers, this lady that you located, sign [1640—1310] an affidavit, too, did you not? A. Yes, sir.

Q. Showing you now Defendants' Ex. "B," for identification; this affidavit is as follows:

Mr. GORDON.—Why not offer it in evidence instead of reading it?

Mr. TANNAHILL.—All right. The defendants offer in evidence Defendants' Exhibit "B," for identification. The defendants also offer Defendants' Exhibit "D," for identification, which has already been read into the record.

Q. You had Mary A. Loney sign an affidavit also, did you not, Mr. Steffey? (Handing witness paper.) A. Yes, sir.

Mr. TANNAHILL.—The defendants also offer in evidence the affidavit of Mary A. Loney, and ask that it be marked as defendants' proper exhibit.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "Y."

Mr. TANNAHILL.—Q. You had James T. Jolly sign an affidavit too, did you not, on December 22, 1906? A. Yes, sir.

Mr. TANNAHILL.—The defendants offer in evi-

(Testimony of Harvey J. Steffey.)

dence the affidavit of James T. Jolly, just identified by the witness, and ask that it be marked as a defendants' exhibit.

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. "Z."

Mr. TANNAHILL.—The defendants offer in evidence Defendants' Ex. "C," for identification, the affidavit first identified.

Q. I will ask you if you had Effie A. Jolly sign an affidavit? A. I did.

Q. That is the affidavit you had her sign, is it (showing witness paper)? [1641—1311]

A. I had her sign an affidavit; I think that is it.

Mr. TANNAHILL.—The defendants offer in evidence the affidavit of Effie A. Jolly, just identified by the witness.

Q. Now, as I understand, Mr. Steffey, you don't wish to be understood as swearing that you wilfully induced these people who signed these affidavits to commit perjury, but had them sign an affidavit setting forth their understanding of the transaction as it was, the way they understood it?

A. That what?

Q. As I understand you, you do not wish to be understood as swearing that you wilfully induced these people who signed these affidavits to commit perjury, but that you had them sign an affidavit setting forth the facts as they understood them?

A. These affidavits were signed subsequent to the time that they made their transfer of the property, most of them.

(Testimony of Harvey J. Steffey.)

Q. Some of them were not, some of them were signed at the time.

A. Some of them were signed at the time.

Q. But, as I understand you, you do not wish to be understood as swearing that you wilfully suborned them to commit perjury, but that you had them sign these affidavits setting forth the conditions as they understood them?

A. Mr. Dwyer had me have them sign these affidavits.

Q. Well, that is all right; that is what you stated, that you had them sign these affidavits which set forth the transactions as they understood them?

A. Well, I don't know whether they did or not.

Q. You don't wish to be understood as swearing that you wilfully went and had these women commit perjury? A. No.

Q. Then, you had them sign the affidavits setting forth the transaction as they understood it, taking into consideration your statement to them that you couldn't make a contract with them, and leaving them [1642—1312] with that understanding?

A. Well, I don't know whether that is the way they understood it or not.

Q. Well, they have sworn to it, haven't they, and especially when they have testified to it on the stand?

Mr. GORDON.—I object to argument as to what they testified to.

Mr. TANNAHILL.—Q. In case these witnesses have sworn to these affidavits and reaffirmed them upon the stand, and testified that the statements con-

(Testimony of Harvey J. Steffey.)

tained in those affidavits were true as they understood it, then you do not wish to be understood as swearing that that is not the fact, do you, as they understood it?

A. Well, I don't know whether this is as they understood it or not.

Q. Well, if they swore that they understood it that way, did you think that they did not understand it that way? A. Possibly they might not.

Q. And it is possible they did understand it that way, is it not? A. They might have; yes.

Q. And you told each and every one of them that you couldn't make an agreement with them, didn't you? A. Yes, previous to locating them.

Q. And you told them you couldn't make an agreement with them previous to making final proof, didn't you? A. Yes, sir.

Q. Now, if these witnesses swear that they understood the arrangement to be that you would sell the land for them after they proved up, so that they would make at least \$150.00 over what it cost them, that that was their understanding of the arrangement, you don't wish to be understood as swearing that they didn't understand it that way, do you?

Mr. GORDON.—I object to that as argument.

A. There was no understanding that I should sell the land for them whatever. [1643—1313]

Mr. TANNAHILL.—Q. Now, you had them sign those affidavits as you stated, did you? A. Yes, sir.

Q. And those affidavits you say probably set forth the circumstances as they understood them?

(Testimony of Harvey J. Steffey.)

A. Very likely.

Q. Now, Mr. Steffey, you are not on very friendly terms with Mr. Dwyer or Mr. Kettenbach or Mr. Kester, are you? A. Not with Mr. Dwyer, no.

Q. Or with Mr. Kester or Mr. Kettenbach?

A. Well, nothing, no; no real intimacy.

Q. Now, do you know Herb. Cole? A. Yes, sir.

Q. I will ask you if you didn't have a talk with Herb. Cole regarding this transaction, in Moscow, in the spring of 1910, in which you stated to Herb. Cole, in the Hotel Moscow, yourself and Herb. Cole being present, that "they have done me dirt and I am going to say anything I can to cinch them," or words in substance and to that effect? A. No, sir.

Q. You never made any such statement as that at all? A. No, sir.

Q. You never had any talk, conversation with Herb. Cole about it, did you?

A. Possibly. Oh, yes, very often.

Q. But you never told him you was going to swear anything you could to cinch them? A. No, sir.

Q. Do you remember of having a talk with Sol. Caldwell regarding this matter, in Pierce, in the fall of 1908, or about that time?

A. I very often discussed the matter with him, yes.

Q. Do you remember of telling him at that time, in Pierce, Nez Perce County, Idaho, yourself, Sol. Caldwell and none others being [1644—1314] present, that "they have given me dirt and I am going to cinch them and will swear to anything I can

(Testimony of Harvey J. Steffey.)

to cinch them," or words in substance and to that effect? A. No, sir.

Q. Nothing of that kind?

A. No, sir. I am not in the habit of using the word "dirt" whatever.

Q. You never had any such conversation as that with him? A. I have not.

Q. Did you tell him they hadn't done right by you and you was going to cinch them?

A. Very likely I did. I never told him I would cinch them, but I very often told him they didn't do right by me.

Q. And you told him you was going to make them all the trouble you could, didn't you?

A. No, I think not.

Q. Do you remember of having a conversation with William B. Benton last fall, in Lewiston, Nez Perce County, Idaho, in which you stated, yourself and William B. Benton being present, in which you stated that "they have not done the square thing by me and I am going to give it back to them," or words in substance and to that effect?

A. No, sir, I never had no conversation with Mr. William Benton whatever in regard to any of this land business.

Q. You never made any statement to him that you was going to swear to anything you could to cinch them? A. None whatever.

Q. You had no conversation at all with him in regard to it at any time? A. Never.

Q. Now, did you tell Frank J. Bonney that if he

(Testimony of Harvey J. Steffey.)

would come down and testify for the Government regarding these transactions, this conversation [1645—1315] occurring in Nez Perce County, Idaho, in the spring or early winter, or late winter of 1910, that he would stand a good chance to get this land back, or words in substance and to that effect?

A. No, sir.

Q. Nothing of the kind? A. None whatever.

Q. Then, did you tell Frank J. Bonney that they had given you the worst of it and you was going to even up with them, or words in substance and to that effect?

A. Possibly I may have mentioned the fact that I didn't think they had done right by me; I very likely did.

Q. Did you tell him you was going to get back at them, going to even up with them? A. No, sir.

Q. And you didn't tell Clinton E. Perkins that?

A. No, sir.

Q. Or Charlie Myers? A. No, sir.

Q. At any time? A. No, sir, never.

Q. And you didn't tell Jolly that? A. No, sir.

Q. J. T. Jolly, I believe, is his name. You didn't tell him that? A. No, sir.

Q. Now, you stated, Mr. Steffey, that at one time when Mr. Dwyer talked to you about this transaction that Mr. Kester was in the bank and you and Dwyer was on the outside of the cage, and Kester was over on the inside? A. Yes, sir.

Q. Was that before or after these people had made final proof?

(Testimony of Harvey J. Steffey.)

A. Well, some of them hadn't been located at that time. [1646—1316]

Q. That was before some of them were located?

A. Yes, sir.

Q. What did Kester say about it?

A. Well, I don't remember exactly what he said, about it, but he agreed and seemed well pleased that the prospects of getting good claims was all right.

Q. But you can't tell anything that Kester said?

A. Not exactly, no.

Q. You have no recollection of anything he said?

A. Only that he agreed to the wine supper.

Q. And you don't know what he said about it?

A. No, not in substance, only that he agreed that it was good to get those kind of claims.

Q. Where was Mr. Kester standing?

A. Inside of the cashier's window.

Q. Were there other people in the bank at the time?

A. I don't think there was anybody there with the exception of Dwyer and myself.

Q. It was a public place, was it not?

A. Yes, sir.

Q. People going out and coming in?

A. Yes, sir.

Q. And there was nothing wrong about the transactions that you people discussed there in Mr. Kester's presence, was there?

(No answer.)

Q. Simply a matter that you generally discussed around where other people was, wasn't it, where

(Testimony of Harvey J. Steffey.)

people would likely come in and go out?

A. Oh! The place itself? I didn't exactly understand the question.

Q. I say there was nothing really wrong about the matter that you discussed there; it was such matters as you would naturally discuss or [1647—1317] wouldn't be afraid to discuss in a place where people would come and go?

A. Well, I don't know; it is as you take it. It was about locating people on these claims up there that I speak of.

Q. And you think there was really something wrong about what you was talking about?

A. Well, it looks as though the Government thought it was wrong.

Q. Well, I am asking you what you thought about it. A. I think it was wrong.

Q. There was other employees of the bank there?

A. I think there was.

Q. Now, when did you first wake up to the realization of the fact that there was something wrong about this transaction?

A. Before I entered into it.

Q. When did you make up your mind to tell the Government officials about it?

A. Well, some time after Dwyer had tried to sell my barn, and did other things in connection with it.

Q. As a matter of fact, you did it more to even up with Dwyer than anything else, didn't you?

A. No, I was perfectly even with him before.

Q. You was even with him before? Then did you

(Testimony of Harvey J. Steffey.)

do it to even up with Kester and Kettenbach?

A. I had nothing to even up with them.

Q. But if you hadn't been mad at Dwyer you wouldn't have done it, would you?

A. Possibly I might.

Q. It wasn't for the purpose of vindicating the laws of the great commonwealth that you did it, then, was it? A. Not exactly, no, sir.

Q. It wasn't because you had repented of anything wrong that you had done or a kind of remorse, or anything of that kind?

A. Oh, not in particular, no, sir. [1648—1318]

Q. But it was simply to even up with Dwyer?

A. No; I considered myself even with him.

Q. You considered yourself even, but you wanted to go him one better? A. No, not in particular.

Q. You have been in the employ of the Government for some time, haven't you? A. No, sir.

Q. You never was? A. I never was.

Q. You have been drawing money from them right along, haven't you? A. Only as a witness.

Q. When did you draw any witness fees?

A. To Boise and return, and Moscow and return.

Q. You haven't received any pay from them for anything else? A. No, sir.

Q. You didn't receive any pay for going up to see Bonney and Myers and these entrymen to try to get them to come down and swear against Dwyer, did you?

A. No, sir; that was done at my expense and at my request.

(Testimony of Harvey J. Steffey.)

Q. You have been helping the Government agents all you could, giving them all the information you could, haven't you?

A. I don't know what they consider it; I have given them all the information possible.

Q. You have been in close consultation with them all the time when they are here?

A. Not very often.

Q. Now, as a matter of fact, Mr. Steffey, you never claimed but a half interest in that barn, did you?

A. That is all.

Q. And Dwyer rented it to Reed, did he not, T. B. Reed? A. No, he didn't rent it. [1649—1319]

Q. Did he sell it to him?

A. He sold it outright to him.

Q. Didn't you have Charlie McDonald write a letter to Reed that you would hold him responsible for half of the rent of that barn?

A. I had Mr. McDonald write to Reed in regard to the rent of the barn.

Q. Mr. Steffey, in your direct examination you testified that this conversation with Mr. Kester was about two weeks before final proof was made.

Mr. GORDON.—We object to that.

Mr. TANNAHILL.—Q. Was that this conversation that you refer to with Mr. Dwyer and yourself, when Kester was in the bank?

Mr. GORDON.—I object to that, as that isn't the exact testimony of the witness in his examination in chief, but his testimony relative to that is exactly as he told it on cross-examination.

(Testimony of Harvey J. Steffey.)

Mr. TANNAHILL.—Answer the question.

A. I did not.

Q. Now, when was this conversation that you had with Mr. Dwyer, when Mr. Kester was in the bank, in relation to the time final proof was made on any of these claims?

A. Before the location, before I located these people on claims.

Q. You testified that Mr. Kettenbach, that you went to Mr. Kettenbach to make arrangements for the money for some of these people to prove up with. How long was that before final proof was made?

A. I think possibly that was about two weeks, although I couldn't say positively.

Q. And Mr. Kettenbach told you to draw the check on your own account? A. Yes, sir.

Q. Just the same as you had been doing before?

A. Yes. [1650—1320]

Q. That is the only talk you had with Mr. Kettenbach regarding it, is it?

A. That is the only time I ever spoke to Mr. Kettenbach—

Q. And you didn't tell him then anything about any arrangements with these entrymen?

A. Oh, yes; I spoke to him before, when he said he would make the arrangements with Mr. Smith.

Q. What did you tell him?

A. That I had these people, that they were coming down to prove up on these claims, and I asked him where I was going to get the money.

Q. You didn't tell him anything about any con-

(Testimony of Harvey J. Steffey.)

tract or agreement you had with them that they were to convey the land to Mr. Kester and Kettenbach?

A. No, I think not, at the time. I think,—I am quite sure I didn't tell him anything of that kind.

Q. All you told him was that these people were coming down to prove up and wanted to get the money for them to prove up with? A. Yes.

Q. And that conversation that you say you and Dwyer had in the presence of Mr. Kester, or when Kester was in the bank, is the only conversation you ever had with Kester regarding it?

A. Regarding the entries, yes.

Q. And the only conversation you ever had in Kester's presence regarding them?

A. In regard to the entries, yes.

Q. Now, you say you had a talk with Mr. Dwyer regarding the Lewiston National Bank being interested with him in these transactions. Where did that conversation take place?

A. Well, I couldn't say positively, but in some of our conversations and talk during the time we was working together, camping out nights somewhere, it possibly occurred some way there; I can't recall the time and place, though. [1651—1321]

Q. What was said in that conversation?

A. That he had no trouble whatever in getting the bank interested in this timber business.

Q. Was that all that was said?

A. All that I can distinctly remember, yes.

Q. You don't remember anything else that was

(Testimony of Harvey J. Steffey.)

said? A. Not definitely, no.

Q. Now, you say you had a conversation with Mr. Kester after these claims were deeded, in which he told you that you would get what was coming to you, or words to that effect? A. Yes, sir.

Q. Where did that conversation take place?

A. On the streets of Lewiston.

Q. Whereabouts on the street?

A. Right in front of Ed. Wiggins' cigar-store.

Q. What was said?

A. I told him there was a misunderstanding between Mr. Dwyer and myself with regard to my remuneration for locating these people on the claims, and he told me then to just let it go and he would see that I would get all that I wanted and all that I claimed, or possibly more, just to leave it to him and make no trouble.

Q. That is all that was said?

A. At that time; and I told him that I would.

Q. And you say you have no grievance against Mr. Kester or Mr. Kettenbach?

A. None whatever.

Q. They paid you for the work you did for them?

A. In some respects, yes.

Q. Now, then, didn't you say you had an understanding with them that you was to get \$100.00 out of the Myers claims?

A. No, I had no understanding with them.

Q. Well, what was your understanding regarding the Myers claim? [1652—1322]

A. I had the understanding with Mr. Dwyer.

(Testimony of Harvey J. Steffey.)

Q. Well, with Mr. Dwyer. That you was to get \$100.00 out of the Myers claims? A. Yes.

Q. Now, you say that Mr. Dwyer had you go and have these witnesses sign those affidavits. Where did you have your talk regarding that?

A. That was in Moscow.

Q. What was said?

A. The typewritten forms were given to me and I was told to go up there and have all those entry-men that had already made out deeds, have them sign those affidavits in addition.

Q. Now, you say Bonney got \$212.00 out of his claim. You also testified on direct examination that he was to get at least \$175.00. A. Yes.

Q. Now, your arrangement with Bonney was a little different from what it was with the rest of them, wasn't it? A. Well, no; about the same.

Q. And you did tell Bonney that you would sell the claim so that he would get at least \$175.00 over and above expenses?

A. I don't remember of ever telling any of them that I would sell their claims for them.

Q. But you told Bonney that you couldn't make any agreement with him too, didn't you?

A. I think I did.

Q. And you left him with that understanding?

A. I don't know what his understanding was, but that is what I told him. [1653—1323]

Q. Now, you bought another claim from Bonney, didn't you?

(No answer.)

(Testimony of Harvey J. Steffey.)

Q. You bought another claim from Bonney, didn't you? A. Not directly; no.

Q. Who did you buy that for?

A. Mr. Herb. Cole bought that.

Q. Mr. Herb. Cole bought that? A. Yes, sir.

Q. Well, you did the buying—made the contract—didn't you?

A. Well, yes; I bought it for Mr. Cole.

Q. And did you buy that for Mr. Cole before he filed on it, too?

A. Oh, no; that was his homestead that he had proved up on.

Q. Now, then, do you know whether Bonney and Perkins used the money which you gave them to make final proof with or not?

A. Well, I think they did, yes.

Q. Don't you know that they used their own money to make final proof with?

A. I don't think they did.

Q. If they swore on the stand that they did, would you believe what they said?

A. Not under the circumstances, I don't think I would.

Q. You would not believe them at all?

A. Not about that.

Q. Don't you know that Bonney got the money other ways and made his proof and kept the money which you gave him?

A. Well, he may have done that.

Q. Don't you know that Perkins sold stock and got the money to make his proof, and kept the money

(Testimony of Harvey J. Steffey.)

that you gave him? A. No.

Q. And didn't use it at all for the making of proof?

A. I don't know it.

Q. He may have done that? [1654—1324]

A. He may have done it.

Q. Well, now then, tell us, Mr. Steffey, just what you told these entrymen; just the language that you used and the language they used?

A. In regard to what?

Q. In regard to taking up these claims?

A. I told them—I guaranteed that they would—

Q. Now don't say any conclusion. I want you to give the language that you used; not what you agreed to do or guaranteed to do, or anything of that kind.

A. Guaranteed to do, is what I said to them.

Q. No; that is not the language that you used. I want to know just what you said, and what they said.

A. I guaranteed to give them \$200.00—that they would make \$200.00 out of their entry.

Q. Now, is that all that was said?

A. Oh, there might have been other trivial matters that we discussed; but that was the substance of the agreement.

Q. Now, I didn't ask you for the substance; I asked you for what you said and what they said.

A. Well, that's what I said.

Q. Well, what did you say?

A. Well, I agreed to give them \$200.00—that they would make \$200.00 out of the claim, rather.

Q. Now, how did that come up?

(Testimony of Harvey J. Steffey.)

A. Just that way.

Q. Now, there was more than that said. You know that, don't you, Mr. Steffey?

A. Well, I can't go back that far and remember the details; but that is what I told them.

Q. Well, what did they say?

A. Well, they agreed to it. They were willing to make the [1655—1325] entry.

Q. And you can't remember a single word that was said? A. Oh, yes, I can.

Q. Well, what did they say?

A. I guaranteed that they would make \$200.00 at least out of their entry.

Q. Now, they didn't say that "I guarantee that they would make \$200.00 over expenses"; you know that, don't you?

A. No, they didn't say that; I said that.

Q. Well, what else did you say?

A. Well, I couldn't say exactly what else I did say.

Q. Just simply that "I will guarantee you that you will make at least \$200.00 over and above expenses"? Is that right?

A. Well, I don't know that I at that time mentioned the word "expenses."

Q. Well, that they would make \$200.00 out of it?

A. That they would make \$200.00 out of their entry.

Q. And that's all that was said? A. Yes, sir.

Q. That is everything that you can remember that was said? A. Yes, sir.

Q. Now, then, that was in relation to the Perkins

(Testimony of Harvey J. Steffey.)

claim, was it?

A. Well, that was about the general character of it in relation to all of those locations that I made.

Q. Now, what was said about the Jolly claim—the same thing?

A. That I would guarantee they made \$200.00.

Q. And what was said about the Bonney claim?

A. That I would guarantee he would make \$200.00—or \$175.00, I am quite sure.

Q. What was said about the Myers claims?

A. Well, the Myers claims was a little different.

Q. Well, what was said about them? [1656—1326]

A. Well, he was to get \$150.00 or \$175.00.

Q. What was said about the Mary A. Loney claim? Now, give us the language that was used there as near as you can.

A. That is as near as I can get at it.

Q. All right. Now, what else was said about the Mary A. Loney claim?

A. I guaranteed that she would make \$200.00.

Q. And that is all that you can remember that was said? A. Just about, yes.

Q. Now, you took those people to the claims, did you? A. Yes, sir.

Q. What was your purpose in taking them to the claims?

A. Well, that was one of the requirements.

Q. Did you show them the corners?

A. Sometimes yes—not all of the corners. I always showed them the line or a corner.

(Testimony of Harvey J. Steffey.)

Q. Well, did you take them to the claims for the purpose of looking at the timber?

A. Well, no; I don't think that was really my intention. It was simply—

Q. What was your intention?

A. To comply with the law and take them to the claims, as the law required to take them on each legal subdivision.

Q. I see. You were not so particular about them complying with the law regarding agreements. Why were you so particular in regard to complying with the law with regard to going on the premises?

A. Oh, I wasn't so particular; it was simply to get the land the best and easiest I thought possible.

Q. But you did that so that they would be satisfied that they had seen the land and had complied with the law, did you not? A. Yes.

Q. So that they would not have to go to the land office and [1657—1327] swear that they had been on the land when they hadn't?

A. Well, not so much that, but so that it wouldn't give anyone an opportunity to contest them and so that they wouldn't lose their claims. There was a whole lot of contesting going on there.

Q. You couldn't make them believe that they had been on the land when they hadn't, could you?

A. I don't think any of them people I could.

Q. They were people who wanted to comply with the law?

A. Well, not that so much, but the country was very easy to get to, and accessible, and it would have

(Testimony of Harvey J. Steffey.)

been hard to deceive them.

Q. Now, I believe you said you went to Dwyer and talked to him about these claims that you had; is that right? A. Yes, sir.

Q. Dwyer didn't come to you?

A. No; I think I went to Dwyer.

Q. Some of these deeds you made out yourself, did you not, Mr. Steffey? A. I don't think I did.

Q. You say that Dwyer went to the claims and looked over these claims before the deal was finally closed? A. Some of them.

Q. Didn't he go and look over all of them?

A. Not all of them.

Q. Well, some of them he had been over before that, had he not? A. He may have been.

Q. But he satisfied himself as to the claims, and the description, and the timber that was on them, before the deal was finally closed, did he?

A. He what?

Q. Satisfied himself as to the claims, and the descriptions of them, before the deal was finally closed, didn't he? A. I think he did, yes. [1658—1328]

Q. Now, what was said between you and Dwyer concerning the locating of these people on this land? Just give the language that was used as near as you can.

A. Well, I mentioned the fact that I had found some claims that looked pretty good to me, and talking the matter over, and Mr. Dwyer says, "Well, get somebody to locate on them, and tell them we will

(Testimony of Harvey J. Steffey.)

give them \$200.00 and furnish the money to prove up with."

Q. Was there anything else that was said?

A. Oh, there might have been.

Q. Can you think of anything else that was said?

A. Nothing in particular, no.

Q. Now, Mr. Steffey, how do you know that you didn't have sufficient funds in the bank to meet these checks—all of these checks that went in—that you drew? A. I had a bank-book.

Q. You had a bank-book? A. Yes, sir.

Q. Did you keep a check on it all the time?

A. I used to hand it in frequently.

Q. Well, some of these checks that you drew, you did have the money there to meet them with, did you not? A. Some of them, yes.

Q. And the most of them you had the money there to meet them with, didn't you?

A. I think not the most of them.

Q. You carried a bank account there, and you usually had money in the bank, didn't you?

A. Sometimes, yes.

Q. When you didn't have, you had no trouble getting your checks honored? A. No.

Q. You never had any checks turned down on you? [1659—1329] A. Once.

Q. Once? A. Yes, sir.

Q. That was after you had had some trouble, wasn't it? A. No; I had no trouble.

Q. When was that?

A. That was after the bank had changed hands.

(Testimony of Harvey J. Steffey.)

Q. Oh, after the bank had changed hands?

A. Yes, sir.

Q. Well, while Kester and Kettenbach were there you never had any trouble with your checks, did you?

A. Never.

Q. Now, Mr. Steffey, you stated something about a note at the bank for \$800.00, and in relation to that was a statement concerning a relinquishment. What was the circumstances of that?

A. I don't exactly know the circumstances myself. It was something in reference to the Shumaker claim that Mr. Dwyer had contested and won; and even at that time the circumstances was dim in my own mind, and I never tried to learn the exact details of it.

Q. Well, this note was paid when the claim was deeded, was it?

A. When Mr. Myers deeded the claim to Kester and Kettenbach, why it was straightened up somehow or other.

Q. Well, that contest or that relinquishment had nothing to do with the claims that Myers entered, did it? A. That Myers filed on?

Q. Yes.

A. Oh, yes; that was the claim.

Q. That was the claim that Myers filed on?

A. Yes, sir.

Q. But you don't know what the circumstances were regarding that? A. No, not entirely.

Q. But that \$800.00 note was taken up at the time?

[1660—1330]

(Testimony of Harvey J. Steffey.)

A. At the time he made the transfer, yes.

Q. At the time he made the transfer?

A. Yes.

Q. Now, you gave some notes to the bank at different times to cover overdrafts that you had there, did you not? A. Yes, sir.

Q. A couple of \$350.00 notes?

A. Well, some for \$1,000.00, I think, or over, or \$1200.00, I think was the amounts.

Q. And you gave some just about the time you was making these transactions of furnishing the money for these entrymen to make their proof, did you not? A. Yes, sir.

Q. One of \$350.00, and one of \$300.00 or \$400.00?

A. Yes—\$800.00, or \$900.00, or \$1,000.00; I have forgotten just exactly what the amounts were.

Q. And when the claims were deeded over your notes were taken up? A. Yes, sir.

Q. Now, this conversation that you say you and Dwyer had in the presence of Mr. Kester, and the conversation you had with Mr. Kettenbach regarding the getting of the money for one of these entrymen to make proof, is the only conversations that you had either with Mr. Dwyer—that you and Dwyer had either with or in the presence of Mr. Kester or Mr. Kettenbach, is it? A. Yes, sir.

Mr. TANNAHILL.—That's all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Steffey, you have testified that you knew that it was not proper to make an agreement with

(Testimony of Harvey J. Steffey.)

these people, did you not? A. I did.

Q. And I will ask you whether or not that is not the reason you [1661—1331] told them that you didn't have an agreement with them, so that they could ease their consciences when they went to the land office and made their sworn statements?

A. Yes, sir.

Q. They understood it that way, too, didn't they?

A. Yes, sir, they did.

Q. In other words, you were making evidence, in advance, just as soon as you started into this business?

A. Yes, sir.

Q. I will ask you, Mr. Steffey, whether or not any reason was given you why you should get these affidavits, just after the investigations in South Idaho of the Barber entries? A. Yes, sir.

Q. What was the reason that was given you?

A. I understood the suggestion came from Mr. Borah, that they would protect themselves additionally with these affidavits; that they were always given in the case of a transfer in South Idaho.

Mr. TANNAHILL.—I move to strike out the answer of the witness as to a conclusion as to what he understood, it not being a statement of the fact.

Mr. GORDON.—Q. I will ask you whether or not you got them so as to keep the witnesses from testifying to any contrary statement? A. Yes, sir.

Q. Now, the question was asked you as to whether you and Dwyer didn't go to this land before the deal was finally closed. What did you mean "before

(Testimony of Harvey J. Steffey.)

the deal was finally closed''? Did you mean before the deeds were made? A. Yes.

Q. I will ask you whether or not your deal and arrangement with Dwyer wasn't finally closed after that first conversation you had with him? [1662—1332]

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. Answer the question.

A. What conversation?

Q. I say, you had no further agreement with Mr. Dwyer after your first conversation you had with him, and before you located any of these entrymen?

A. No.

Q. All the agreement you had with him was before that time?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. You know Mr. Herb. Cole, do you? A. Yes, sir.

Q. Do you know what relation he is to one of these defendants?

A. Why, he is the husband of George Kester's sister.

Q. Do you know Sol. Caldwell?

A. Yes, sir.

Q. What relation is he to one of the defendants?

A. He is some distant connection—a cousin, I understand.

Q. Of who? A. Of Kettenbach.

(Testimony of Harvey J. Steffey.)

Q. Will. Kettenbach? A. Yes.

Q. Do you know Mr. William B. Benton?

A. Yes, sir.

Q. Do you know what relation he is to Mr. William F. Kettenbach?

A. He is some connection or other—a cousin, I think.

Q. Now, when you were asked what you told these witnesses, or these entrymen, you answered on two or three different occasions that all you could remember of the conversation was that you guaranteed them [1663—1333] that they would get \$200.00. Now, was that all of the conversation, or was that all of the conversation relative to the guaranty?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—Well, that was—of course, I can't remember of any other conversation, but that was the conversation that we had when we both agreed to the arrangements. That is all that I can state. I can't remember the details.

Q. Yes; but now, what were they to do? What did you tell them they would have to do?

A. They would have to file on this land, and—

Mr. TANNAHILL.—We object to that—just wait a minute, Mr. Gordon—we object to that as leading and suggestive, and calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. Well, I will ask the question in another way: Was there anything said at that time as to what they should do to get this guaranty?

(Testimony of Harvey J. Steffey.)

A. Oh, yes.

Q. Well, now, what was said?

Mr. TANNAHILL.—The same objection.

WITNESS.—That they was to file on the land, make final proof, and I was to bear all the expenses.

Mr. GORDON.—Yes?

WITNESS.—And they was to deed the land over to who I said.

Mr. GORDON.—Yes. Now, you have—

Mr. TANNAHILL.—I move to strike out the answer of the witness, on the ground that it is a conclusion and not a statement of the fact.

Mr. GORDON.—Q. I will ask you whether that was a conclusion, or whether that was what you told each one of the entrymen?

Mr. TANNAHILL.—The same objection, and on the further ground that it is leading and suggestive.

WITNESS.—Yes; I told each one of them that.
[1664—1334]

Mr. GORDON.—Q. Now, you said twice on cross-examination that there was no agreement that you were to sell the land for them. I will ask you if the statement that you have just made is the reason that you said you wasn't to sell the land for them?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion of the witness, argumentative, irrelevant, and immaterial. It makes no difference what his reasons were.

Mr. GORDON.—Answer the question.

A. Why, I was simply stating it because it was the exact truth. There was never any question—never

(Testimony of Harvey J. Steffey.)

any agreement, or never any understanding that I was to sell the land for them.

Q. What was the agreement?

Mr. TANNAHILL.—The same objection.

WITNESS.—That they was to get \$200.00 for their entry.

Mr. GORDON.—Q. And were they to do anything for the \$200.00?

Mr. TANNAHILL.—The same objection.

WITNESS.—They were to file on the claim and prove up on it and deed it to whoever I designated.

Mr. GORDON.—Q. Now, there were two claims that you mentioned that you and Mr. Dwyer went to see some time before final proof. Do you remember which they were? A. Yes, sir.

Q. Which were they?

A. Mrs. Loney's and Mrs. Jolly's claims.

Q. Now, had you had any talk with Mr. Dwyer about those claims before the entrymen were located?

A. Yes.

Q. Did you tell him anything about them?

A. Yes, sir. [1665—1335]

Q. What did you tell him?

A. I told him that they were rather indifferent claims; that they were at that time not exceptionally good locations, and described them as near as I could; and finally he told me to locate them anyway.

Q. Now, counsel in his questions was evidently trying to bring out the itinerary of your entire life, and I will ask you when you were born, Mr. Steffey?

A. When?

(Testimony of Harvey J. Steffey.)

Q. Yes—what year?

A. The 25th day of November, 1858.

Q. 1858? A. Yes, sir.

Q. And the first part of your testimony, in which you were answering as to how long you had stayed at certain places, and where you had been, that was all prior to your first going to California; is that correct? A. Yes, sir.

Q. And do you remember about how old you were when you first went to California?

A. No, I don't.

Q. It was somewhere between 10 and 12 years old?

A. Yes.

Q. I ask you that because I thought you said you first went to California in the early seventies; is that correct?

A. I think it was in the latter part of either 1868 or 1869 somewhere. I went alone.

Q. And then you stayed in California for a number of years—three or four years—and went to school, did you? A. Yes, sir.

Q. Now, how long have you been in Idaho?

A. I have been in the northern part since the fall of '82.

Q. Since '82? [1666—1336] A. Yes, sir.

Q. You have practically lived in Idaho how long?—any place in the state?

A. Oh, about 35 years, I guess—or 25 or 26 years.

Q. And Idaho has been your home ever since 1882?

A. Yes, sir.

Q. Now, did Kester and Kettenbach ever pay you

(Testimony of Harvey J. Steffey.)

any money for anything? A. No.

Q. I understood, in response to a question asked you by counsel for the defense, that you said yes, they had paid you for something. I didn't know what it was.

A. Well, indirectly. I don't remember of Mr. Kester or Mr. Kettenbach ever paying me anything. I was always paid for what I did for them by Mr. Dwyer, by check.

Q. Now, when these deeds were made I understood you to say that there were some notes in the bank that were paid, in response to a question by Mr. Tannahill; is that correct? A. Yes, sir.

Q. State how that was done. Was the amount of your notes taken out, or—

A. The amount of the expenses for these timber claims were added together, and that amount was given credit to me, and my notes were taken up.

Q. And your notes were taken up from that?

A. Yes, sir.

Q. And where was that settlement made?

A. Well, usually in Mr. Dwyer's office, in the Lewiston National Bank building.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Steffey, these claims were held up for a while, were they [1667—1337] not?

A. Only two of them.

Q. What two was that?

A. Mrs. Loney's and Mrs. Jolly's.

(Testimony of Harvey J. Steffey.)

Q. And Mr. Bartlett held them up, did he not?

A. I don't know whether it was the Register or Receiver.

Q. One of them? A. One of them, yes.

Q. And held up for further investigation?

A. Yes, sir.

Q. Or something of that kind? A. Yes, sir.

Q. Now, you wrote to President Roosevelt a personal letter regarding these two claims, did you not?

A. No. It wasn't in reference to any particular claims.

Q. Well, trouble came up concerning these two claims, didn't it? A. No.

Q. They had nothing to do with the letter you wrote to President Roosevelt?

A. Well, the claims had nothing in particular to do with it. It was the conduct of Mr. Bartlett towards some of the people that I was locating.

Q. And that had nothing to do with these two claims?

A. Not any more than the other claims, no.

Q. But indirectly they did have something to do with them? A. Yes, sir, indirectly.

Q. And because these claims were held up it had something to do with it?

A. The claims—I don't know whether that was the cause of the claims being held up or not.

Q. Well, do you remember that you referred to these two particular claims in your letter, or these entries, in the letter you wrote to [1668—1338] President Roosevelt?

(Testimony of Harvey J. Steffey.)

A. I possibly may have. I don't remember referring to the two claims in particular.

Q. Well, don't you remember telling him that these two claims were all right?

A. Were all right?

Q. Yes, sir, or words to that effect?

A. No, I don't remember.

Q. Was Mr. Bartlett's actions towards the two entrymen your reason, or something to that effect?

A. No. I have a copy of the letter. I don't think I referred to them in that respect at all.

Q. But these two claims did have something to do with your writing the letter?

A. Well, not any more than some of the others. No; I think the one in particular that I referred to was the Jannie Myers claim.

Q. The Jannie Myers claim?

A. Jannie Myers, yes.

Q. And that was one of these, wasn't it?

A. No. No; that claim wasn't held up.

Q. That wasn't held up? A. No.

Q. It wasn't held up, but it was one of the claims in litigation, wasn't it?

A. Oh, one of these that I located? Yes, sir. I thought you was referring to the Mrs. Loney and Mrs. Jolly claims.

Q. No. Do you remember, Mr. Steffey, that the first time you seen Mr. Dwyer was when you was coming out from Pierce City; you was going in and Mr. Dwyer was coming out, and you talked to him about the Lanes' land, and you was telling Mr. Dwyer

(Testimony of Harvey J. Steffey.)

what a nice fellow George Kester was; that the Lanes couldn't have proved up if it hadn't been for him letting the Lanes have the money? [1669—1339]

A. I remember speaking to Mr. Dwyer. That was the time I spoke to him and asked him if he could get the money for Winnie Lane and Joe Lane to prove up on, and that was the time I met him coming from Pierce and I was going in. It was along in the evening; that is, in the afternoon.

Q. Hadn't you just come from Lewiston after their making their proof? A. No.

Q. Are you sure of that?

A. Possibly—yes—I think—

Q. And didn't Mr. Dwyer tell you that Kester had phoned up to him and asked him about the Lanes' land?

A. He may have; I don't recollect it, though. He possibly did. I believe I recollect now that it was after they had proved up, because I was telling him I was disappointed in some people I relied on in getting the money. I remember that quite well.

Q. And you told him that Kester had accommodated them and let the Lanes have the money to prove up on?

A. I think very likely I did tell him that, because Mr. Kester did let them have the money to prove up with.

Q. Now, don't you remember that that was the first time you seen Mr. Dwyer?

A. No, that wasn't the first time I seen him.

Q. That was along about the first time you seen

(Testimony of Harvey J. Steffey.)

him? You never had any business with him before that?

A. No—no business with him before that whatever.

Mr. TANNAHILL.—That's all. [1670—1340]

[Testimony of Mrs. Kittie E. Dwyer, for Complainant.]

Mrs. KITTIE E. DWYER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Kittie E. Dwyer?

A. Yes, sir.

Q. And you are the wife of William Dwyer, are you? A. Yes, sir.

Q. And you have a number of timber claims, have you, that you have purchased? A. Yes, sir.

Q. Do you remember from whom you purchased these claims? A. I do not.

Q. Who transacted the business for you, Mrs. Dwyer? A. Mr. Dwyer.

Q. Have you an independent business of your own, Mrs. Dwyer?

A. Why, I don't quite understand what that means.

Q. Well, I mean are you engaged in any business at all except as a housewife?

A. No. No. I have money that I invest.

Q. Well, now, where did you get that money?

(Testimony of Mrs. Kittie E. Dwyer.)

A. Well, it has been from different sources; from speculation; buying and selling property.

Q. Now, when did you begin speculating in property? A. I think in the year of '87.

Q. And where did you get the money you started with? A. From business.

Q. What business? A. The hotel business.

Q. With whom were you engaged in the hotel business? A. Mr. Dwyer and I.

Q. And it was money that you and he had made in the hotel business; [1671—1341] is that correct?

A. Yes, sir.

Q. Now, what was your first investment in speculation?

A. Well, I can't recall the first. As near as I can remember it was in city property.

Q. Whereabouts? A. In Saginaw, Michigan.

Q. Where? A. In Saginaw, Michigan.

Q. And how long have you been in Idaho?

A. 13 years this November.

Q. And did you bring any money to Idaho with you? A. Yes, sir.

Q. And did you deposit it in a bank?

A. Not all of it. I brought it in drafts and bought property within two weeks after I came here.

Q. And what property did you buy?

A. Clarkston, Washington.

Q. Clarkston what?

A. In Clarkston, Washington.

Q. And that was your home, was it?

A. Yes, sir.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. And you have lived there ever since?

A. No, sir.

Q. You still own that home, do you?

A. Part of it.

Q. And where is the other part? A. I sold it.

Q. Well, now, of what did this home consist—of a tract of land or not? A. Yes, sir.

Q. And how much land was there around this home? [1672—1342] A. Ten acres.

Q. And have you sold the ten acres?

A. Part of it.

Q. And what did you get for the part you sold?

A. \$8,000.00.

Q. And was there a mortgage on it when you sold it? A. Yes, sir.

Q. For how much was the mortgage?

A. I don't just remember now how much it was.

Q. Who held the mortgage?

A. I think the last mortgage that was given on it was given to the Lewiston National Bank, or to Mrs. White, I don't know which.

Q. And do you remember how much it was for?

A. No, sir.

Q. Have you any idea? A. No, I haven't.

Q. Now, outside of your timber holdings do you own any other property in Idaho? A. Yes, sir.

Q. Or Clarkston, in Washington? A. Yes, sir.

Q. What other property have you?

A. I have the property that I live on here—live in here in Idaho.

Q. And when did you purchase that?

(Testimony of Mrs. Kittie E. Dwyer.)

A. I purchased that two years ago last Spring.

Q. And did you pay cash for it?

A. Yes, sir. Well, I paid part cash. It was a business transaction.

Q. Now, can you remember how much cash you paid? A. No, I can't.

Q. Did you attend to it, or did Mr. Dwyer attend to it for you? [1673—1343] A. Mr. Dwyer.

Q. And do you know whether there is a mortgage on it or not? A. Yes, I think there is.

Q. Do you know how much that is?

A. Well, I don't know exactly.

Q. Do you know how much the mortgage was when it was given? A. No, I don't.

Q. Have you an idea of how much it was?

A. Well, I saw the mortgage and read it and signed it, but it has slipped my mind. In doing other business right along I don't just keep track of the amount.

Q. Now, you have a bank account in the Lewiston National Bank, have you not? A. Yes, sir.

Q. And your husband draws on that account whenever he wants to, does he not? A. Yes, sir.

Q. And he signs his own name to checks, does he not? A. Sometimes he does.

Q. And he has no independent account there of his own? A. I don't know.

Q. Well, he has authority to draw on your bank account whenever he sees fit; is that correct?

A. Yes, sir.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. Now, do you know how many timber claims you own?

Mr. TÄNNAHILL.—We object to that question unless it is limited to the claims in issue.

Mr. GORDON.—Answer the question, please.

A. Eleven, I think; I am not sure.

Q. Now, do you know from whom you purchased those claims—any one of them?

A. I couldn't be positive unless I saw them.
[1674—1344]

Q. Did you attend to the purchase of any of them yourself?

A. I think I did some of them, but I wouldn't be positive about that.

Q. Now, didn't Mr. Dwyer attend to the business management and the purchase of all those claims?

A. No, I don't think he did. I think I—he may have; I am not positive.

Q. Do you know what you paid for any of those claims?

A. I wouldn't be positive unless I saw the papers.

Q. Well, could you tell from the description of them what you paid for them? A. No, sir.

Q. How would you tell?

A. I would tell by the deeds.

Q. By the deeds? A. By the records, yes.

Q. By what records? Would that refresh your memory if I would show you the deeds of these various entries, could you tell how much you paid for them? A. Certainly.

Q. Well, did you buy a piece of property from

(Testimony of Mrs. Kittie E. Dwyer.)

Mrs. Hattie Rowland?

A. I am not sure of the name.

Q. And would you know by the descriptions of it whether you had purchased it?

A. Do you mean by— No, I wouldn't be positive.

Q. The quarter section. I mean? A. No.

Q. Now, do you remember whether or not you bought a timber claim from Mrs. Elizabeth White?

A. Mrs. Elizabeth White?

Q. Yes. [1675—1345]

A. No, I don't think I did.

Q. Do you know whether you bought a claim that was owned by Mrs. Mamie P. White?

A. No, I don't think I did.

Q. Do you know whether you ever purchased a claim from a man named McMillan?

A. I am not sure. I don't recall the name.

Q. Did you buy a timber claim from Fred. Justice?

A. I am not positive.

Q. Do you know whether you bought a timber claim from Mrs. Frances Justice? A. Yes.

Q. What did you give for that?

A. I don't recall just now how much I gave for that.

Q. Did you attend to the transaction of that, or did your husband attend to it? A. A part of it.

Q. Now, with whom did you do the dealing for the sale of that land, or for the purchase of that land?

A. Why, I won't be sure. I think that I dealt

(Testimony of Mrs. Kittie E. Dwyer.)

with Mrs. Justice.

Q. Do you know where it was that you dealt with her?

A. Why, we must have started the negotiations in Clarkston, because I live there.

Q. Have you any distinct recollection of any dealings with reference to purchasing her timber claim?

A. I have not.

Q. You have none whatever? A. No, sir.

Q. Now, Mrs. Dwyer, have you any mortgages or mortgage on any of your timber claims? A. Yes.

Q. Who holds the mortgage? [1676—1346]

A. I don't know whether you would call them mortgages or not; they are in the Trust Company.

Q. Well, now, how are they in the Trust Company? Under what arrangement are they in the Trust Company?

A. Well, I borrowed money on them and they hold them as security.

Q. What do they hold them as security for?

A. However the state law provides. I can't explain it, but it was explained thoroughly to me—I borrowed the money on them.

Q. And when did you first borrow any money on the timber claims?

A. Oh, I have been borrowing on them ever since I first began to buy them.

Q. Now, do you remember how much money you borrowed on them? A. I do not.

Q. Is it as much as \$1,000.00?

A. On all of them?

(Testimony of Mrs. Kittie E. Dwyer.)

Q. Yes. A. Together?

Q. Yes.

A. Oh, I think it must be much more than that.

Q. Was it \$2,000.00? A. Yes.

Q. Well, was it \$3,000.00?

A. Yes; I think it is more than that.

Q. Now, how much was it?

A. Well, I wouldn't like to say. It is as much as I possibly or probably could borrow on them, because if I saw a chance to buy more property, why I would try to raise the mortgage on all of it—any of the property I might have.

Q. Now, did you borrow any money from the Lewiston National Bank? A. Yes, sir.

Q. On your timber claims?

A. Yes, sir. [1677—1347]

Q. Have you also borrowed some from the Idaho Trust Company on your timber claims?

A. I may have at some time.

Q. Have you recently?

A. I am not sure. I don't think so.

Q. When was the last time that you remember of borrowing any money on any of your timber claims? A. Oh, I think it must be nearly a year.

Q. How long ago? A. Within a year, I think.

Q. Now, can you fix the period any more definitely than that? A. I can not.

Q. Well, has it been a month ago?

A. Oh, it is more than a month ago, but I don't think it has been more than a year.

Q. And do you remember how much it was you

(Testimony of Mrs. Kittie E. Dwyer.)

borrowed then? A. I do not.

Q. Well, was it \$1,000.00, or was it more?

A. No, I can't remember. Whatever I lack I try to borrow.

Q. And do you know whether or not you ever gave any mortgages to the Lewiston National Bank on your timber claims to make good some overdraft in your bank account?

A. I am not sure whether it was to the Lewiston National Bank or whether it was to Mrs. White that carried the mortgages, but I think I have had mortgages carried by both of them.

Q. With whom did you transact your business concerning Mrs. White lending you money?

A. Mr. Kettenbach.

Q. Mr. William F. Kettenbach? A. Yes, sir.

Q. Have you any distinct recollection of borrowing from Mr. William F. Kettenbach any of Mrs. White's money on your timber claims? [1678—1348] A. I am not sure, but I think I did.

Q. Do you know when it was? A. I do not.

Q. Has it been in the last year? A. No, sir.

Q. Now, do you remember whether you borrowed on all of your timber claims, or only on certain of them? A. I think I borrowed on all of them.

Q. You put them all in? A. At different times.

Q. And do you ever remember of signing an agreement with either the Lewiston National Bank or the Idaho Trust Company? A. An agreement?

Q. Yes.

(Testimony of Mrs. Kittie E. Dwyer.)

A. An agreement? For what, I mean? I have signed a mortgage. Is that an agreement?

Q. You say you signed a mortgage on your timber claims? A. Yes, sir.

Q. How many? A. How many mortgages?

Q. Yes.

A. Well, as I would get them I would raise more money and would make new mortgages and take up the old ones and make another.

Q. Do you know how much any of these mortgages were for? A. I do not.

Q. Have you paid any of those mortgages?

A. Why, they are all paid but the one.

Q. All but one? A. I think so.

Q. Then, you have no idea how much that is for?

A. I have not.

Q. And did you ever make a deed of this property to anybody? [1679—1349]

A. I don't see how I could make a deed when I have it mortgaged. Well, now, perhaps you may call the Idaho Trust Company, or whatever it is—I always get those different concerns mixed—if it is the Idaho Trust Company it is where Mr. Frank Kettenbach is interested, isn't it?

Q. Yes. A. Is that the Idaho Trust?

Q. That is the Idaho Trust.

A. That is the one that holds the security on my property.

Q. Now, do you remember whether you ever deeded your property to the Idaho Trust Company?

A. I don't know. That is the way the state al-

(Testimony of Mrs. Kittie E. Dwyer.)

lows them to do business. I borrowed the money on that property, but I still own it.

Q. You still own it?

A. To a certain extent; when I pay off that money I own it, I expect.

Q. Now, with whom did you transact that business—this mortgage that you speak about with the Idaho Trust Company? A. Mr. Smith.

Q. Mr. Smith? A. I think so.

Q. And when was that business conducted?—that transaction?

A. Well, I won't be sure of the date. I think it was within a year, but I am not positive.

Q. And is that the only transaction you ever had with the Idaho Trust Company with reference to your timber claim?

A. I think it is. They might have held mortgages before, but I don't recall them.

Q. Now, in the purchase of these timber claims didn't your husband just draw on your bank account and attend to this matter for you?

A. No, sir. He never buys any property for me in my name without consulting me.

Q. And you haven't any recollection of any claim, though, by [1680—1350] name, that he ever consulted you about?

A. There is so many, and so many that I have done business with, that I really—I hate to expose my ignorance, but I am not the least bit good in remembering, and I don't recall them.

Q. Now, did you have any arrangement with Mr.

(Testimony of Mrs. Kittie E. Dwyer.)

Kester whereby he would allow you to overdaw your bank account in the purchase of timber claims?

A. No, sir.

Q. You never did? A. No.

Q. Do you know whether or not your bank account was replenished at times by Mr. Kester crediting you with amounts for expenses of your husband?

A. No, sir.

Q. You know nothing about that? A. No, sir.

Q. Have you carried overdrafts in your bank account that you know of, Mrs. Dwyer?

A. Yes, sir.

Q. Do you know how much those overdrafts would amount to, approximately? A. No, I don't.

Q. Well, I mean would you overdraw your bank account \$500.00 if you knew it?

A. Oh, I don't think so.

Q. You would overdraw it a few dollars?

A. Yes, sir.

Q. \$25.00 or \$30.00?

A. Yes, sir, and pay the interest on the overdraft.

Q. How is that?

A. And always pay the interest on the overdraft.

Q. Well, that would only be small amounts, though? [1681—1351] A. Yes, sir.

Q. You have no recollection of ever overdrawing your account to any large amount—\$200.00, or \$300.00, or \$500.00,—have you?

A. I don't recollect it.

Q. You have no recollection of paying any interest on any large overdrafts?

A. I may have, but I don't remember.

(Testimony of Mrs. Kittie E. Dwyer.)

Q. You don't remember? A. No, sir.

Q. Do you still carry an account with the Lewiston National Bank? A. No, sir.

Q. Do you know how much is in it? A. No, sir.
Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all.

A recess was thereupon taken until 7:30 o'clock P. M. [1682—1352]

At 7:30 o'clock P. M. on Friday, September 9th, 1910, the hearing was resumed.

[**Testimony of Edward C. Smith, for Complainant.**]

EDWARD C. SMITH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your full name?

A. Edward C. Smith.

Q. And are you an officer in the Idaho Trust Company? A. Yes, sir.

Q. And how long have you been an officer in that company? A. Since the latter part of 1902.

Q. And what is your official position with the Idaho Trust Company?

A. Secretary and Treasurer.

Q. And have you been Secretary and Treasurer from 1902 down to the present time? A. Yes.

Q. Who has been the President of that company during that period? A. Frank W. Kettenbach.

Q. Now, have you the Articles of Incorporation of the Idaho Trust Company? A. No, sir.

(Testimony of Edward C. Smith.)

Q. Have you made a search for them?

A. I made a search for them. I have a copy of them in our minutes.

Q. Well, will you look at the minutes and tell us when the Idaho Trust Company was incorporated, and who the incorporators are.

A. What was the question you asked me? [1683—1353]

Q. When the Idaho Trust Company was incorporated, and who the incorporators were?

A. The names of the incorporators are: Frank W. Kettenbach, Edward C. Smith, Marcus Simpson, A. Freidenrich, and G. A. Smith.

Q. Were they the incorporators? A. Yes, sir.

Q. And what is the date of the incorporation?

A. Well, it was about July, 1902. That is the date we have here.

Q. And what is the name of the corporation?

A. Idaho Trust Company.

Q. And the Frank W. Kettenbach you speak of as an incorporator, is he the present President of the institution? A. Yes, sir.

Q. And has been ever since the company was incorporated? A. Yes, sir.

Q. And you are the Edward C. Smith who is one of the incorporators? A. Yes, sir.

Mr. GORDON.—Do you gentlemen waive any further formality as to when the Idaho Trust Company was incorporated, and who the incorporators were?

Mr. BABB.—Yes.

Mr. GORDON.—Do you, Mr. Tannahill?

(Testimony of Edward C. Smith.)

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. What was the capital stock of the Idaho Trust Company when it was incorporated?

A. It had an authorized capital stock of \$200,000.00.

Q. How much of that stock was paid in at the time it was incorporated?

A. Well, I think at the time it was incorporated it was \$26,000— [1684—1354] it would be necessary to figure—

Mr. BABB.—I think it was about \$60,000.00 when it started.

WITNESS.—\$60,000.00?

Mr. BABB.—Yes; I think that is what the statute required.

Mr. GORDON.—Q. Have you the minutes of the Idaho Trust Company—the meetings of the Idaho Trust Company Board? A. Yes, sir.

Q. Have you the stock-book also of the Idaho Trust Company with you?

A. Yes, sir—the stock ledger.

Q. Well, is that the same thing as the stock-book?

A. That is what I would call the stock-book. It isn't the certificate-book.

Q. Have you got that?

A. No, I haven't got the certificates. The ledger gives a memorandum of all the certificates that have been issued and transferred.

Q. It is made up from the certificate-book?

A. Yes, sir. It is what we depend on.

Q. Now, who composed the first Board of Direc-

(Testimony of Edward C. Smith.)

tors of the Idaho Trust Company?

A. Frank W. Kettenbach, Edward C. Smith, Marcus Simpson, A. Freidenrich, and G. A. Smith.

Q. And all the persons who constituted the first Board of Directors were incorporators, were they?

A. Yes, sir.

Q. Now, who subscribed to the stock in the first instance—all who subscribed, and the number of shares that each holds in the company?

A. Frank W. Kettenbach,— Do you want the shares?

Q. Yes?

A. —350; Edward C. Smith, 200; Marcus Simpson, 250; A. Freidenrich, [1685—1355] 100; G. A. Smith, 100; W. F. Kettenbach, 100; Elizabeth White, 50; Grace K. Pfafflin, 50; Amy K. Kettenbach 10; Frank McGrane, 50; W. W. Brown, 20; Otto Kettenbach, 15; James E. Babb, 5.

Q. Do you know whether Mr. Freidenrich is a relative of the Kettenbachs?

A. No, sir, I don't believe he is.

Q. Is Mr. G. A. Smith a relative of yours?

A. No, sir.

Q. And the W. F. Kettenbach that is mentioned by you as holding 100 shares of stock is one of the defendants in this case? A. Yes, sir.

Q. And who is the Elizabeth White that you mentioned?

A. That is William F. Kettenbach's mother in law.

Q. And Grace K. Pfafflin, who is she?

A. William F. Kettenbach's sister.

(Testimony of Edward C. Smith.)

Q. And Amy G. Kettenbach, who is she?

A. Mrs. Frank W. Kettenbach.

Q. And Otto Kettenbach, who is he?

A. He is a nephew of Frank Kettenbach's.

Q. And a cousin of W. F. Kettenbach's?

A. Yes.

Q. Now, what was the value of each share at this time? A. The par value was \$100.00.

Q. And these shares that you have read here were subscribed at the par value? A. Yes, sir.

Q. Now, has the Board of Directors of the Idaho Trust Company been changed since its incorporation?

A. I think so, yes. Let's see—not much. Yes; Mr. Simpson is not living, and Mr. Freidenrich is not a director.

Q. Now, have the Board of Directors that you read been re-elected at each annual meeting? [1686—1356] A. Yes, sir.

Q. Now, who succeeded Mr. Frederick? Is that what you call him? A. Freidenrich.

Q. Who succeeded him on the directorate?

A. I think Mr. William F. Kettenbach.

Q. And who succeeded the other gentleman?

A. Mr. O. A. Kjos.

Q. And did Mr. William F. Kettenbach purchase any more stock when he was elected a director?

A. I don't believe so.

Q. Now, I wish you would turn to the minutes of the Idaho Trust Company and read the minutes of the meeting of the directors when they purchased the

(Testimony of Edward C. Smith.)

stock of the Lewiston National Bank.

A. A meeting of the directors, you say?

Q. Yes. I want all your minute entries concerning that transaction.

A. Well, we had authority from the stockholders as well as the directors.

Q. Well, now, who were the directors at that time?

A. The directors were Frank— Let's see:—

Mr. BABB.—Just read the minutes of the meetings straight. They will probably come out in there.

Mr. GORDON.—Q. Read the date first.

A. September 9, 1907, is the first action the directors took.

Q. September 9, 1907?

A. Yes; authorized the officers to proceed with the—

Q. Well, now, read that minute entry.

A. Do you want the entire minutes?

Q. Yes, sir.

A. (Reading:) Meeting of directors of Idaho Trust Company, September 9, 1907, at the office of the company. [1687—1357]

The following directors were present: Frank W. Kettenbach, O. A. Kjos, Edward C. Smith, and George A. Smith.

Minutes of meeting of July 8, 1907, were read and approved.

On motion of O. A. Kjos, seconded, put to vote and carried, the following resolution was adopted:

WHEREAS, a number of shareholders of this company are also shareholders of the Lewiston

(Testimony of Edward C. Smith.)

National Bank, and the President of this company is also President of said bank, and the public considers the credit of one institution is affected by the credit of the other, and greater economy of operation could be obtained by closer consolidation of the shareholders of these two banks, Therefore,

BE IT RESOLVED, that a complete consolidation of the stock interests of the two institutions be effected, and that the best plan to accomplish this result is for the shareholders of the Lewiston National Bank to sell and deliver their stock to the Idaho Trust Company, and receive in exchange therefor stock of said company of equal value, and that a committee consisting of Directors Edward C. Smith and George A. Smith be appointed to act jointly with a committee of three shareholders of the Lewiston National Bank, to wit: Frank W. Kettenbach, J. Alexander and J. B. Morris, to supervise the exchange of said stock, examine and approve the securities of both banks, and approve the correct valuation of the assets of each bank for the purpose of this exchange, and that we recommend that all shareholders of this company turn in their stock to said committee, with authority to make said exchange.

Q. Now, is there anything else in that minute-book relative to that transaction at this meeting?

A. No, sir, I believe not. I think not, Mr. Gordon, except that there is a similar move there by the stockholders.

Q. When was that meeting?

(Testimony of Edward C. Smith.)

A. I have got that right here.

Q. Well, find out—but, first, read who the minutes of that meeting are signed by. [1688—1358]

A. They are signed by Frank W. Kettenbach, President, and Edward C. Smith, Secretary.

Q. Now, is there a similar resolution passed by the stockholders of the Idaho Trust Company?

A. Yes, something similar to it.

Q. And what is the date of that?

A. July 8th.

Q. July 8th? A. Yes, sir.

Mr. BABB.—Q. And the year?

WITNESS.—1907.

Mr. GORDON.—Q. Now read that.

A. That portion that just applies to the resolution?

Q. Yes—read who was present.

A. (Reading:) Minutes of the stockholders of Idaho Trust Company, pursuant to regular notice published in the Lewiston Tribune, met at the office of the company on July 8th, 1907, at ten o'clock A. M.

The following stockholders were present: Frank W. Kettenbach, O. A. Kjos, Edward C. Smith, William A. Libert, George A. Smith, A. Freidenrich and Sarah J. Simpson, by Edward C. Smith, proxy.

Upon roll call the following shares of stock were represented: Do you want me to go through all this?

Q. Yes.

WITNESS.—(Reading:)

(Testimony of Edward C. Smith.)

Frank W. Kettenbach.....483 shares.

O. A. Kjos.....160

Edward C. Smith.....220

William A. Libert..... 50

George A. Smith.....133

A. Freidenrich..... ..120

[1689—1359]

Sarah J. Simpson, by Edward C. Smith, proxy,
293.

Q. Now, may I interrupt you there, and ask you,
is that the stock of the Idaho Trust Company that is
represented?

A. Yes. These are the minutes of the Idaho Trust
Company.

Q. Yes, and that was the stock of the Idaho Trust
Company that was represented? A. Yes, sir.

Q. Now, how many shares of stock was there there
at that time? A. There was 2,000 shares.

Q. At that time? A. Yes, sir.

Q. Now, proceed to read.

A. Well, the total of those that I have read is 1459
shares. (Reading:) “The minutes of the meeting
of July 2, 1906, were read and upon motion were ap-
proved.” Now, do you want me to read the rest of
this down to where I come to that point?

Q. Yes.

A. (Reading:) “The following resolution was
read by the President:

BE IT RESOLVED, by the stockholders of the
Idaho Trust Company, at the annual meeting
thereof, duly called and convened and now in session

(Testimony of Edward C. Smith.)

on the 8th day of July, 1907, at its office in Lewiston, Nez Perce County, State of Idaho, that it is the desire of this corporation to exercise any and all additional powers and privileges granted by an act of the legislature of the State of Idaho, known as Senate Bill No. 93, Substitute Bill No. 13, approved March 10th, 1907, Laws of Idaho 1907, pages 545 to 547, and that this corporation do and it hereby does adopt all of the provisions of the said act of the legislature last mentioned, and that the Secretary be and he hereby is authorized to certify a copy of this resolution and cause the same to be filed with the Recorder of Nez Perce County, Idaho, and a copy thereof after being so filed certified by said County Recorder, to be filed with the Secretary [1690—1360] of State of the State of Idaho, and another copy thereof to be certified by said County Recorder and filed with the Bank Commissioner of the State of Idaho.

Thereupon, on motion of George A. Smith, seconded by William A. Libert and put to vote and carried unanimously, the above resolution was adopted.

The President laid before the meeting a Report of the President and Secretary of earnings--''

Mr. GORDON.—I don't care about that.

WITNESS.—Well, do you want to get down to your other dope here? There is the statement of the corporation there as to the earnings and expenses.

Mr. GORDON.—Well, I don't care about the expenses. Now, by whom were those resolutions signed?

A. Frank W. Kettenbach, President, and Edward C. Smith, Secretary. There is a resolution on that

(Testimony of Edward C. Smith.)

consolidation, if you want it.

Q. Now, read that. That is at the same meeting?

A. Yes. (Reading:) "Upon motion of O. A. Kjos, seconded, put to vote and carried, the following resolution was adopted:

"WHEREAS, a number of shareholders of the Idaho Trust Company are shareholders in the Lewiston National Bank, and the public would consider the credit of one institution affected the credit of the other, the greater economy of operation can be obtained by consolidation of the two institutions, Therefore,

"BE IT RESOLVED, That the consolidation of the stock interests of the two institutions be recommended, and that the officers of the Idaho Trust Company endeavor to arrange a plan by which said consolidation can be brought about."

Q. Is that all? A. That is all.

Q. And that is the end of the resolution which you say was signed by Frank W. Kettenbach and Edward C. Smith? [1691—1361]

A. Well, it goes on here. That is practically all. It says, "No further business appearing—"

Q. Well, I say, that is the one that was signed by Frank W. Kettenbach, President, and Edward C. Smith, Secretary? A. Yes, sir.

Q. Now, was there an annual meeting at that time? Was that an annual meeting?

A. Yes, sir; that was the regular annual meeting.

Q. Now, were the officers and directors elected at that time?

(Testimony of Edward C. Smith.)

A. The directors were elected at the stockholders' meeting. The officers, of course, were elected at a directors' meeting following.

Q. Now, at that meeting who were the directors who were elected?

A. Frank W. Kettenbach, O. A. Kjos, George A. Smith, Edward C. Smith, and A. Freidenrich.

Q. Now, has there been any change in the Board of Directors between that date and the first of July, 1909?

A. Well, here is the minutes of July 6th, 1909, an adjourned meeting.

Q. Well, now— A. These are the same.

Q. The same directors? A. Yes.

Q. And they were re-elected at the meeting of July 6th, 1909? A. Yes, sir.

Q. Now, have they been re-elected successively from the meeting of July 8th, 1907? A. Yes, sir.

Q. There was just one meeting in between that, was there not? A. Yes, sir.

Q. Now, who are the directors of the Idaho Trust Company at the present time?

A. Frank W. Kettenbach, O. A. Kjos, William F. Kettenbach, George [1692—1362] A. Smith, and Edward C. Smith.

Q. And is the only difference between the election of 1909 and the last election you read that Mr. William F. Kettenbach has supplanted Mr. O. A. Kjos? A. No—he supplanted Mr. Freidenrich.

Q. O. A. Kjos is still a director? A. Yes, sir.

Q. In 1907, in July, by whom was the stock of the

(Testimony of Edward C. Smith.)

Idaho Trust Company held? I wish you would turn to your book—

A. That would be quite a job to tell you that. I would have to go through the whole book to give you that.

Q. Well, that isn't a very big book.

A. Well, there is a big list of them.

Mr. BABB.—You have over \$140,000.00 set forth in that meeting as being represented there, and perhaps that would save you that much.

Mr. GORDON.—\$145,900.00—that is, July 8th. 1907.

A. Yes. Well, maybe that will help out a little, and I will see if I can figure out the balance.

Q. Now, were there any other large blocks of stock held by any other persons?

A. William F. Kettenbach and Grace K. Pfafflin were the largest.

Q. At that time? A. Yes.

Q. And how much did William F. Kettenbach have at that time? A. 235 shares.

Q. And Grace K. Pfafflin?

A. She had 65 shares.

Q. Who was that?

A. Grace K. Pfafflin. I don't think William F. Kettenbach had 235 shares, either. I had better look that up. (Examines book.) William F. Kettenbach had 130.

Q. That was July 8, 1907? [1693—1363]

A. Yes. Do you want me to work these out?

Q. No, not especially.

(Testimony of Edward C. Smith.)

Mr. BABB.—I think you had better work it out, since you have got part of them.

WITNESS.—Sir?

Mr. BABB.—You had better work out the rest of them.

Mr. GORDON.—Q. How many shares were there?

A. 2,000.

Mr. BABB.—I think there was \$200,000.00. He has only accounted for \$145,900.00.

(The witness examined the stock-book, page by page, and made notes on a piece of paper as he went along.)

Mr. GORDON.—Q. Now read them, please.

A. Do you want me to read these over again?

Q. No—you have read the owners of 1459 shares of stock.

A. William F. Kettenbach,	130.
Grace K. Pfafflin,	65.
Elizabeth White,	60.
W. W. Brown,	20.
C. Weisgerber,	26.
S. Salsberg,	30.

Q. Now, Mr. Salsberg, I will ask you is he a son-in-law of Mr. Frank W. Kettenbach? A. No, sir.

Q. What relation is he to him?

A. Well, he is a son-in-law of Harry Kettenbach.

Q. That is a brother of Frank W. Kettenbach?

A. Yes, sir.

Q. All right.

(Testimony of Edward C. Smith.)

A. M. Glatigny,	40.	[1694—1364]
Frank McGrane,	50.	
S. G. Isaman,	30.	
Amy D. Kettenbach,	8.	
E. L. Alford,	15.	
J. E. Babb,	10.	
Marie Kettenbach,	1.	
Alfred Kettenbach,	1.	
Matthew Scully,	10.	
Mrs. Henrietta Freedman,	20.	
M. Fonzac,	10.	
Elizabeth Kettenbach,	15.	
That makes the 2,000 shares.		

Q. Who is this Mr. Alford that you referred to?
What is his business?

A. He is connected with The Tribune.

Q. In what capacity?

A. He is one of the proprietors.

Q. That is a newspaper published in Lewiston,
is it? A. Yes, sir.

Q. And who is Marie Kettenbach?

A. A daughter of Frank W. Kettenbach.

Q. And who is Alfred Kettenbach?

A. A son.

Q. Now, has there been any material change in
the holdings of the stock from that date down to the
present time?

A. It is practically, with the exception of—

Q. With the exception of what?

A. That the stock has been split in two, most of
that—well, everybody has got just half the stock

(Testimony of Edward C. Smith.)

they had before.

Q. Well, how was that condition brought about?

A. By the purchase of the Lewiston National Bank stock; that is, a consolidation with the Lewiston National Bank. [1695—1365]

Q. Well, now, are there any minute entries relative to the consolidation other than you have read?

A. I don't believe there are.

Q. What was the name of that gentleman that you said was a son-in-law of Mr. Harry Kettenbach?

A. Salsberg.

Q. Wasn't he at one time a Director in the Idaho Trust Company? A. No, sir.

Q. Was he a Director in the Lewiston National Bank?

A. No, sir. Well, I won't say he never was.

Q. Well, I am speaking, from your knowledge?

A. Yes, sir.

Q. Of course, I will go into that after a while. Do you remember whether or not at one time he was on a committee to investigate the affairs of the Lewiston National Bank, as a stockholder of the Idaho Trust Company?

A. I don't remember about that, Mr. Gordon.

Q. Well, do you remember at one time there was a joint committee of the Idaho Trust Company and the Lewiston National Bank appointed for the purpose of going over the books of the Lewiston National Bank?

A. There was an examination, yes, sir.

Q. And wasn't Mr. Salsberg a member of that committee?

(Testimony of Edward C. Smith.)

A. Well, he might have been. I don't remember it.

Q. You don't remember it, do you?

A. No, sir. I rather think he was.

Q. Now, have you any record in the books of the Idaho Trust Company showing the purchase of the stock of the Lewiston National Bank, and how that transaction occurred?

A. I have where it was entered up.

Q. Will you give us the date of that, and from what book of the Idaho Trust Company you read it?

A. I have here the ledger—the general ledger of the Idaho [1696—1366] Trust Company, January 11th, 1908.

Q. And what do you find there?

A. I find that 900 shares of the Lewiston National Bank stock was charged up—was entered up in our bonds—what we call the Bond and Warrant Account.

Q. The Bond and Warrant Account?

A. Yes. That's where we carried an item of that kind.

Q. Now, wasn't there anything done between those two dates, between July 8th, relative to this consolidation and this entry you have read of January 11th, 1908, relative to the consolidation?

A. Well, we were working on it all the time. I don't remember that there was anything actually closed until that date. Of course, the stock might not have issued on that identical date, you know.

Q. Now, is there anything that shows the issuance

(Testimony of Edward C. Smith.)

of the stock to these stockholders of the Lewiston National Bank?

A. Yes, sir,—that stock-book there.

Q. Now, will you show how the stock was issued, and to whom it was issued?

A. Well, that is a big undertaking.

Mr. BABB.—Wasn't there a report came in to some board meeting or some stockholders' meeting that will give us an idea of what was done?

WITNESS.—I don't know as to that.

Mr. BABB.—Take it at that January meeting: Was there a January meeting there where that was closed up—the next meeting afterwards?

WITNESS.—There might have been. I will see.

Mr. GORDON.—Q. Well, was this transfer made all at once, or was it when you would get some man who would agree to transfer his stock under those conditions?

A. Oh, I think it was practically at one time. We arranged with the stockholders before we did anything. There wasn't any stockholders objected to it. [1697—1367]

Q. Now, you purchased, or transferred—I will say you purchased 900 shares of the Lewiston National Bank stock, and gave in exchange for that 900 shares of Lewiston National Bank stock, 900 shares of Idaho Trust Company stock; is that correct? A. Yes, sir.

Q. Well, now, where did you get the 900 shares of Idaho Trust Company stock that you gave for the 900 shares of Lewiston National Bank stock?

(Testimony of Edward C. Smith.)

A. From the stockholders.

Q. Now, what stockholders?

A. The stockholders of the Idaho Trust Company.

Q. Now, how was that apportioned?

A. Well, they split their stock in two.

Q. Did you split your stock in two, or did you double your stock?

(No answer.)

Q. Did you increase your stock?

A. No—we split it in two.

Q. Now, you have here Frank W. Kettenbach, 483 shares of stock; is that correct?

A. Why, I presume so—whatever figures I gave you there.

Q. Now, did he get a half of that?—

A. Yes, sir.

Q. —number of shares of stock—

A. Yes.

Q. —in the Lewiston National Bank?

A. No; no. No. No, sir; he didn't get any of the Lewiston National Bank stock at all. He took half of the Idaho Trust Company stock. He relinquished one-half of his stock.

Q. Well, did he own any Lewiston National Bank stock then?

A. No. Oh, well, he did some.

Q. I mean through this transaction?

A. No, sir. [1698—1368]

Q. Now, please explain to me how that was done, will you? Does your books show how that was done?

(Testimony of Edward C. Smith.)

A. Why, I have just explained it to you.

Q. Now, just tell how it was done.

A. The Lewiston National Bank stockholders surrendered all their stock, and transferred it over to the Idaho Trust Company, and it went into the assets of the Idaho Trust Company. That doubled the value of the Idaho Trust Company stock. Instead of being worth \$100.00 it was worth \$200.00 a share. Say Mr. Kettenbach, the one you are speaking about there, by his splitting his stock in two, taking one-half of what he had before, it would be worth the same amount of money as it was before, because it was worth \$200.00 per share where it was worth \$100 before; and the rest of it went to the stockholders of the Lewiston National.

Q. Yes; but now he still holds on the books of the Idaho Trust Company 483 shares of stock?

A. Why, whatever the ledger calls for.

Q. Well, that is the account you read.

A. Well, that is what it is, I guess.

Q. Then he didn't surrender any of his stock, did he? A. The Idaho Trust Company stock?

Q. Yes. A. Yes, he did; of course, he did.

Q. He had 483 shares in the beginning, didn't he?

A. Let me get my—

Q. Please answer that, will you?

A. Well, I will have to look here before I answer your question.

Mr. BABB.—Some people acquired more stock at the time, instead of surrendering it, I know. I did.

WITNESS.—Well, now, in Mr. Kettenbach's

(Testimony of Edward C. Smith.)

case, he didn't. He held some stock there in trust that wasn't surrendered; but he surrendered 193 shares. [1699—1369]

Mr. GORDON.—Q. Well, then, he didn't have 483 shares, did he?

A. He had before the consolidation, yes.

Q. He had before the consolidation? Well, I asked you to give me the number of shares held by each shareholder on July 8th, 1907, and you gave it, and I asked you if there had been any change between that time and the present time, and you said no. Now, if there has been any change I want to know what it is.

Mr. BABB.—Well, he explained that. He said there was not much change in the personnel, but he said there was a change in the amount of their holdings.

Mr. GORDON.—Q. Now, explain that.

A. What Mr. Babb has said there covers the question. There is practically no change in the individuals, but there is a change in the holdings.

Q. Well, I want to know what the change in the holdings is. I want to know who holds the stock, and how much each stockholder owns of that.

A. Now?—

Q. I want to know from July 8th, 1907, down to the present time, yes?

A. Well, I had better make another list of it, then,—a list of the present date.

Q. Well, I want to know the changes as they occurred right along; that is what I want to know.

(Testimony of Edward C. Smith.)

Mr. BABB.—I object to that as immaterial and irrelevant.

WITNESS.—Well,—

Mr. BABB.—This is simply a fishing expedition, where there are no fish.

Mr. GORDON.—Well, I am entitled to all the fish I can get.

Q. Let me ask you this, Mr. Smith: When the transfer was completed [1700—1370] how did the stock stand? A. It stood—

Q. January 11th, 1908?

A. It stood, with the exception of Mr. Kettenbach there, every stockholder in the Idaho Trust Company had one-half of the stock he had before. It was split in two.

Q. Well, in number of shares, did he have only half the number of shares? A. Yes, sir.

Q. Or in value?

A. No—in number of shares. He had just one-half as many shares. A man that had one share before had just one-half of a share afterwards.

Q. Now, does that show on your books?

A. Yes, sir, with every individual.

Q. Now, can you tell from your books how the stock was held on January 11th, 1908?

A. Yes. Yes, sir—practically one-half of them—

Q. Well, I don't want to know "practically" what your books show; I want to know exactly what they show.

A. All right, sir; I will give it to you.

(Testimony of Edward C. Smith.)

Mr. BABB.—We object to that as immaterial and irrelevant.

WITNESS.—January 11th, 1908; is that what you want?

Mr. GORDON.—I think that is the date you gave when the consolidation was completed.

(The witness examined the stock-book, and made notations therefrom.)

Mr. GORDON.—Q. Now, as I understand, Mr. Smith, the Idaho Trust Company bought how many shares of stock of the Lewiston National Bank?

A. 900, I believe.

Q. Was it 900, or 910? [1701—1371]

A. Well, it was 900, and they bought ten shares afterwards.

Q. Now, did they exchange 900 shares of Idaho Trust Company stock for that 900 shares of Lewiston National Bank stock? A. Yes, sir.

Q. And—

A. That is, that's what it resulted in. It wasn't exactly a straight exchange; that is, it was the stockholders.

Q. Now, what did the Lewiston National Bank stockholders get for their stock?

A. 900 shares of Idaho Trust Company stock.

Q. Now, that 900 shares of Lewiston National Bank stock went into the Idaho Trust Company assets; is that correct? A. Yes.

Q. And the stockholders of the Idaho Trust Company put up 900 shares of stock to purchase that Lewiston National Bank stock, did they not?

(Testimony of Edward C. Smith.)

A. Yes.

Q. Now, how was that apportioned?

A. The Lewiston National Bank stockholders got one share of Idaho Trust Company stock for every share that they owned in the Lewiston National.

Q. I understand that.

A. Apportioned? Maybe I don't understand you?

Q. Well, if the Idaho Trust Company has issued 2,000 shares of stock,— A. Yes, sir.

Q. —the Idaho Trust Company doesn't own those 2,000 shares of stock? A. No.

Q. The stockholders own them? A. Yes, sir.

Q. Now, there is 900 shares of stock of the Lewiston National [1702—1372] Bank purchased; is that correct?

A. Well, I don't know whether you would call it "purchased" or not; it was put into the assets of the Idaho Trust Company.

Q. Well, how did they get it? The people didn't give it to them, did they?

A. Well, it was purchased by reason of this agreement with the stockholders. The stockholders of the Idaho Trust Company agreed to release one-half of their stock upon putting the Lewiston National Bank stock into the assets of the Idaho Trust Company.

Q. Yes. Now, did they release more than 900 shares of Idaho Trust Company stock to the company? A. More?

Q. Well, I mean of their holdings? The stockholders of the Idaho Trust Company, did they re-

(Testimony of Edward C. Smith.)

lease half of their stock to the Idaho Trust Company? Did they turn it into the company?

A. Well, I hardly know how to answer that question. The stock was surrendered, and re-issued—to be re-issued; that is, where it was necessary. It wasn't all surrendered; there was only enough of the Idaho Trust Company stock surrendered—that is, one-half of it.

Q. I may be very dense; but I can't quite understand. You read here that Mr. Frank W. Kettenbach owned 483 shares of stock—is that correct—in the Idaho Trust Company? A. I think so.

Q. Now, the Idaho Trust Company didn't own any stock of itself, did it? All of these shares of stock had been subscribed, had they not?

A. I believe so.

Q. Now, the Idaho Trust Company, as a company, wants to purchase 900 shares of Lewiston National Bank stock; that's correct, isn't it? A. Yes.

Q. And they have got to get something to purchase it with, haven't they, if they are going to give shares of stock for it? Is that correct? [1703—1373]

Q. Now, the Idaho Trust Company has got to get some of its stock back, or it has got to issue more stock, hasn't it, to get that? Is that correct?

A. Well, no, sir.

Q. Well, it can't issue stock without it has some stock to issue, can it?

A. The stockholders surrendered one-half of their stock.

Q. Well, I understand that; but now tell me, who

(Testimony of Edward C. Smith.)

surrendered half of their stock? Just name the people that surrendered their stock.

A. Well, the stockholders—the Idaho Trust Company stockholders.

Q. How is that?

A. The Idaho Trust Company stockholders.

Q. Well, name the stockholders that surrendered their stock, and how much each stockholder surrendered, of the Idaho Trust Company.

A. Well, in order to do that I will have to go all over this again.

Q. Isn't that what you have been working on?

A. Yes; but I didn't complete it.

Q. You have got there 1849 shares? (Referring to statement compiled by witness.) A. Yes, sir.

Q. Well, didn't you need only 900 shares?

A. No, I needed 2,000.

Q. Weren't you going to issue only one share of Idaho Trust Company stock for one share of Lewiston National Bank stock?

A. Oh, well, I have got this thing—this thing isn't right, here. This is dead sure wrong. There is a mistake there somewhere, because there is only—Well, here, I'll tell you—

Mr. BABB.—It seems to me you would have to give the witness time [1704—1374] to make up a statement. He can't do that here. He would have to have time.

WITNESS.—What I was making here is a total list of all the stockholders after the consolidation.

Mr. GORDON.—Now, I would appreciate it very

(Testimony of Edward C. Smith.)

much, if it is not inflicting too much of a task upon you, if you will before noon to-morrow prepare a list showing which of the stockholders of the Idaho Trust Company surrendered their stock to the company, how much each stockholder surrendered, for the purchase of the 900 shares of the Lewiston National Bank stock, and to whom those 900 shares of Idaho Trust Company stock was issued to pay for that Lewiston National Bank stock.

A. Well, you see, I wasn't working on that at all; I was working on the wrong proposition.

Q. Well, that is what I wanted.

A. Well, I was working on the wrong thing altogether.

Q. Have you with you, Mr. Smith, the agreement made between certain of the defendants and the Idaho Trust Company as security for money that is referred to in the answer of the Idaho Trust Company in these proceedings that we are now trying?

A. Yes, sir.

Q. May I see it, please?

A. Do you want the agreement?

Q. Yes.

A. There is one of them, and here is the other—there are two. (Handing documents to Mr. Gordon.)

Q. Now, did you know anything about this agreement, Mr. Smith, or take any part in the making of it? A. Well, I signed it as one of the officers.

Q. You signed it as Secretary; but did you have anything to do with the conducting of these negotia-

(Testimony of Edward C. Smith.)

tions relative to this agreement?

A. No, sir, I don't believe I did.

Q. By whom were the negotiations conducted?—

By Mr. William F. [1705—1375] Kettenbach, George H. Kester and Frank W. Kettenbach?

A. Yes.

Q. And do you remember the date of the execution of the agreement? A. No, I can't remember it.

Q. It is dated—

A. —1907, I guess, isn't it?

Q. 1907. The instrument is dated July 23d, 1907, and it is acknowledged July 31st, 1907; and did you sign that at about the date of the making of this instrument?

A. Well, I suppose so. I believe I signed it—that refers to those dates—I signed it some time between the date of it and when it was acknowledged. I certainly signed it some time between the 23d day of July, 1907, and the 31st day of July, 1907.

Q. What is this Certificate of Incorporation which you have here?

A. Oh, that is a certificate that we got from the Secretary of State.

Q. Now, is that the signature of William F. Kettenbach to that instrument? A. Yes, sir.

Q. And the signature of George H. Kester?

A. Yes, sir.

Q. And is that the signature of the Idaho Trust Company? A. Yes, sir.

Q. And I understood you to say it was executed on or about the date that it bears? A. Yes, sir.

(Testimony of Edward C. Smith.)

Mr. GORDON (to Mr. BABB).—I don't want to take this, but are you going to put this in evidence?

Mr. BABB.—Why, I have alleged it in my answer.

Mr. GORDON.—Well, that doesn't answer my question.

Mr. BABB.—Well, I haven't determined yet what I will put in evidence. [1706—1376] I haven't checked it up.

Mr. GORDON.—Well, I don't want to offer in evidence your paper myself; but if you are not going to offer it in evidence, I will.

Mr. BABB.—Well, we don't want to relinquish the instrument, but we are willing that you should have a copy of it. It is our security. That is the original document. I have no objection to it going in.

Mr. GORDON.—Q. Have you the notes referred to in this agreement between William F. Kettenbach and George H. Kester and the Idaho Trust Company, dated July 23d, 1907? A. No, sir.

Q. Where are they?

A. Well, I don't know where they are; they have been cancelled and renewed; I have got the renewals of what we had.

Q. Will you let me see them, please?

(The witness handed three notes to Mr. Gordon.)

A. William F. Kettenbach—I have a note here of his; but he paid up all his indebtedness under that trust.

Q. All of Mr. Kettenbach's indebtedness?

A. —has all been paid in full under that trust;

(Testimony of Edward C. Smith.)

that is, what notes are listed there.

Q. There are no notes listed here. This refers to any notes that have been given or may hereafter be given. A. Well, at any rate, he had some notes.

Q. And they have all been paid?

A. They have all been paid in full, yes, sir.

Q. Now, will your books show what notes were given by Mr. George H. Kester to the Idaho Trust Company, or what notes this agreement refers to?

A. I think it is listed in the agreement.

Mr. BABB.—I think not. That is a general form contract. [1707—1377]

Mr. GORDON.—Q. Now, will your books show what notes were held by the Idaho Trust Company at that time of George H. Kester's? A. Yes, sir.

Q. Will you turn to them?

A. Oh, I can't turn to those here. I will have to refer to our Note Register.

Q. Your what? A. Note Register.

Q. Now, the three notes that you have presented here are one dated June 30, 1910, on demand, for \$20,000.00, signed George H. Kester; and one for \$10,865.50, of the same date, signed by George H. Kester, payable on demand; and another one of the same date in the sum of \$20,000.00, signed George H. Kester, and payable on demand; all of said notes payable to the order of the Idaho Trust Company. Now, as I say, will your register show the notes that these notes were given in renewal of? A. Yes, sir.

Q. Those three notes that I have just referred to were all signed by George H. Kester, were they not?

(Testimony of Edward C. Smith.)

A. Yes, sir, that is his signature.

Q. And delivered to the Idaho Trust Company?

A. Yes, sir.

Mr. GORDON.—I offer in evidence and read into the record the three notes:

\$20,000.00. Lewiston, Idaho, June 30, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Twenty Thousand & 00/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said [1708—1378] suit, and that such sum may be recovered therein.

No. 5756.

GEO. H. KESTER.

\$20,000.00. Lewiston, Idaho, June 30, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Twenty Thousand & 00/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

No. 5755.

GEO. H. KESTER.

(Testimony of Edward C. Smith.)

\$10,865.50. Lewiston, Idaho, June 30, 1910.

On demand, after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Ten Thousand Eight Hundred Sixty-five & 50/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of eight per cent. per annum until paid, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

No. 5757.

GEO. H. KESTER.

Mr. GORDON.—Q. Have you any recollection of whether the notes that these were given in renewal of were demand notes?

A. My opinion is that they were, yes. [1709—1379]

Q. Well, what was the object in having renewals of demand notes, Mr. Smith?

A. Every six months we make it a practice, or as often as every six months we make it a practice of collecting in our interest, and usually taking new notes, and keeping our paper in better shape. It looks better.

Q. Now, did you have anything to do with the original transaction of the notes that were taken; or was that conducted by Mr. Frank W. Kettenbach?

A. That was conducted by Frank W. Kettenbach.

Q. With Mr. Kester and Mr. William F. Kettenbach?

A. Yes, sir.

(Testimony of Edward C. Smith.)

Q. Now, you spoke of some other agreement that you had?

A. Well, there is one there. (Handing another document to Mr. Gordon.)

Q. Now, this is an agreement made by and between William Dwyer and wife Kittie E., of the first part, with the Idaho Trust Company, of the second part, and dated December 31st, 1908. Now, I notice that this is signed by William Dwyer and Kittie E. Dwyer, and the Idaho Trust Company, by Frank W. Kettenbach, President, and Edward C. Smith, Secretary. Are those the signatures of William Dwyer and Kittie E. Dwyer? A. Yes, sir.

Q. And that is the signature of Frank W. Kettenbach? A. Yes, sir.

Q. And of Edward C. Smith? A. Yes, sir.

Q. Now, did you have anything to do with the negotiations of this agreement?

A. No, sir; I believe Mr. Kettenbach—

Q. —transacted it, and you signed it just as an officer of the corporation? A. Yes, sir. [1710—1380]

Q. You knew nothing about it until the negotiations were all completed, and you were called in to sign it as Secretary?

A. Oh, I might have known it, of course—I might have known about it.

Q. Well, do you have any distinct recollection about it? A. No, I haven't.

Q. Now, where are the notes that this agreement that you have just identified refers to?

(Testimony of Edward C. Smith.)

A. We haven't the notes—the notes that were made at the time that agreement was made. We have renewals of them, though.

Q. Now, have you those notes here?

A. Yes, sir. (Handing notes to Mr. Gordon.)

Q. Now, the notes that this agreement was given to secure, have they been increased or decreased since that agreement was entered into, or don't you know? A. I think they were increased a little.

Q. Now, these three notes that you have— (Witness exhibited another note to Mr. Gordon.) Well, that is a note of William F. Kettenbach.

A. That don't belong in there at all.

Q. Now, you have a note here that is dated Lewiston, Idaho, February 5, 1910, payable on demand to the order of the Idaho Trust Company, in the sum of \$9,544.71, and signed W. F. Kettenbach?

A. Yes, sir.

Q. Is that one of the notes that you referred to as having been paid?

A. No, sir; that is a new debt that was created at the time of the date it bears.

Q. Well, at the time that—that is, February 5th, 1910? A. Yes, sir.

Q. At the time this note was given he owed nothing, as I understand it, under that original agreement? [1711—1381]

A. Well, I can't say exactly that way. He, however,—I don't know that at that date he had paid up all of them other notes.

Q. Well, this wasn't given in renewal of any of

(Testimony of Edward C. Smith.)

the others? A. No, sir.

Q. Now, can you tell which of these notes of Dwyer's were given in renewal of any other notes?

A. Well, the large one—the larger one.

Q. And do you know when that loan was made—the \$19,683.50? A. When it was originally made?

Q. Yes.

A. No, sir. I don't. He had an indebtedness to the Lewiston National Bank before I knew anything about it.

Q. Now, this note that I hold, dated April 13, 1910, payable on demand to the Idaho Trust Company, in the sum of \$19,683.50, signed William Dwyer and Kittie E. Dwyer; that is the signature of William Dwyer and Kittie E. Dwyer, is it? A. Yes, sir.

Q. And that note was given to the Idaho Trust Company? A. Yes, sir.

Mr. GORDON.—I will ask that that be offered in evidence and read into the record.

Mr. BABB.—All right.

Mr. GORDON.—And I shall then ask that they return it to you.

Mr. BABB.—Well, you can read it right in now.

Mr. GORDON.—All right. (Reading:)

\$19,683.50. Lewiston, Idaho, April 13, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho, Nineteen Thousand Six Hundred Eighty-three & 50/100 Dollars, in United States Gold Coin, with interest

(Testimony of Edward C. Smith.)

after date in like Gold Coin at the rate of ten per cent. per annum until paid, and if suit be instituted to collect this note or [1712—1382] any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

P. O. City.

WILLIAM DWYER.

No. 5706.

KITTIE E. DWYER.

Mr. GORDON.—Q. Mr. Smith, I show you a note dated April 25, 1910, in the sum of \$480.00, signed William Dwyer. Is that Mr. Dwyer's signature?

A. Yes, sir.

Q. And that was given by Mr. Dwyer, was it?

A. Yes, sir.

Mr. GORDON.—We also offer that note in evidence, which reads as follows:

\$480.00.

Lewiston, Idaho, April 25, 1910.

On demand after date, without grace, for value received, I promise to pay to the order of Idaho Trust Company, a corporation under the laws of Idaho, at its office in Lewiston, Idaho Four Hundred and Eighty Dollars, in United States Gold Coin, with interest after date in like Gold Coin at the rate of ten per cent. per annum, and if suit be instituted to collect this note or any part thereof I agree to pay a reasonable sum in like Gold Coin as attorney's fees in said suit, and that such sum may be recovered therein.

P. O. City.

WILLIAM DWYER.

No. 5720.

No endorsements.

(Testimony of Edward C. Smith.)

Mr. GORDON.—This has nothing to do with the timber transaction at all? A. No.

Q. And this note of \$9,544.71, dated February 5, 1910, signed by William F. Kettenbach, on demand, to the Idaho Trust Company, is not in renewal of any old indebtedness at all? A. No, sir. [1713—1383]

Q. Absolutely a new transaction?

A. Absolutely none at all. I just brought it here for the purpose of having all the notes of his here.

Q. Now, will you bring here to-morrow your Note Register to show all the notes that may be referred to in either of these agreements which you have shown here to-night? A. Yes, sir.

Q. Mr. Smith, are there any resolutions or minute entries of the books of the Idaho Trust Company showing the transactions referred to in the two agreements that you have produced here?

A. This agreement here is copied in detail in the minute-book, but the other is not.

Q. In other words, the William F. Kettenbach agreement is copied—the William F. Kettenbach and George H. Kester agreement is copied in full?

A. Yes, sir.

Q. And the Dwyer agreement isn't?

A. No, sir.

Q. Why wasn't the Dwyer agreement entered into the minutes?

A. I don't know. There was a mistake in not doing it for some reason or other; it hasn't been done.

(Testimony of Edward C. Smith.)

Mr. BABB.—I didn't suppose that either of these were in there.

Mr. GORDON.—Q. Now, is there any resolution of the Idaho Trust Company referring to either of these agreements? A. To this one there is.

Q. What does it say about it? Can you find it?

A. Yes, sir.

Q. I wish you would find it.

A. There it is. (Indicating upon record.)

Q. This agreement is dated July 23d, 1907, and is acknowledged July 31st, 1907, and by resolution of the Board of Directors on September [1714—1384] 9th, 1907, the officers were authorized to accept the trust referred to in that agreement, were they not? A. Yes, sir.

Q. And was there any authorization by the Board of Directors to accept the agreement of Mr. Dwyer and his wife? A. There don't seem to be.

Q. And that was on the responsibility of Mr. Frank W. Kettenbach, was it not?

A. Well, the officers have authority to execute papers of that character.

Q. I understand; but I say, there is no resolution confirming that at all? A. No, sir.

Q. Nothing was done at any of the Directors' meetings relative to it? A. No, sir.

Mr. GORDON.—We offer in evidence the agreement that has been identified by Mr. Smith, dated the 23d day of July, 1907, between William F. Kettenbach and George H. Kester, of the first part, and the Idaho Trust Company, a corporation organized,

etc., of the second part, which reads as follows:
[1715—1385]

[Exhibit No. 72.]

THIS INSTRUMENT, Made in triplicate this 23d day of July, 1907, between William F. Kettenbach and George H. Kester, first parties, and the Idaho Trust Company, a corporation duly organized, and created as such under and in accordance with the laws of the state of Idaho, and which has complied with the requirements of Section 2 of Senate Bill No. 67 of the 6th Session of the Legislature of the state of Idaho, second party,

WITNESSETH: That whereas said first parties have by deed dated the 6th day of July, 1907, conveyed to said second party title to the following real estate owned jointly and equally by said William F. Kettenbach and George H. Kester, and situate in Nez Perce County, state of Idaho, to wit:

North Half of North Half of Section Fourteen (14); Northwest Quarter of Southwest Quarter of Section Fourteen (14); North Half of Southeast and Southeast Quarter of Northeast Quarter of Section Fifteen (15); North Half of Section Twenty-two (22); South Half of Southwest Quarter, Southeast Quarter and South Half of Northeast Quarter of Section Twenty-three (23); South Half of Northeast Quarter and East Half of Southeast Quarter of Section Twenty-six (26); South Half of Northwest Quarter and West Half of Southwest Quarter of Section Twenty-five (25); all in Township Thirty-nine (39), North Range Three (3), East Boise Meridian, containing 1280 acres, more or less.

Southwest Quarter of Northwest Quarter, South Half of Northeast Quarter and Southwest Quarter of Southeast Quarter of Section Nine (9); East Half of Northwest Quarter, Southwest Quarter of Northwest Quarter and South Half of Southwest Quarter of Section Twenty-one (21); North Half of North Half, South Half of Northeast Quarter, East Half of Southeast Quarter, Southwest Quarter of Southeast Quarter and Southwest Quarter of Section Twenty (20); Northeast Quarter, East Half of Southeast Quarter, Southwest Quarter of Southeast Quarter, and South Half of Southwest Quarter of Section Twenty-nine (29); North Half of North Half, Southeast Quarter of Northeast Quarter of Section Thirty-two (32); [1716—1386] Northeast Quarter of Southeast Quarter and Lot Number Eleven (11) of Section Thirty (30); Lot Number One (1) of Section Thirty-one (31); all in Township Thirty-nine (39), North Range Four (4), East Boise Meridian, containing 1520 acres, more or less.

North Half of Southwest Quarter, Southwest Quarter of Southwest Quarter of Section Five (5); Northwest Quarter of Northwest Quarter of Section Eight (8); South Half of Section Seventeen (17); South Half of Section Nineteen (19); North Half of Northeast Quarter of Section Thirty (30); Northeast Quarter and Northeast Quarter of Southeast Quarter of Section Twenty-nine (29); North Half of Southwest Quarter and Northeast Quarter of Section Twenty-eight (28); West Half of Northwest Quarter of Section Twenty-seven (27); all in

Township Thirty-nine (39), North, Range Five (5), East, Boise Meridian, containing 1400 acres, more or less.

The parties hereto define the terms, conditions and trusts upon which said second party shall hold title to said real estate so conveyed as follows, to wit:

First: Second party shall hold the title to said real estate in trust for the said William F. Kettenbach and George H. Kester, their heirs, executors, administrators and assigns, on the terms, conditions, trusts and subject to the following:

Second: Said second party shall have full power and authority to make sales from time to time of said real estate or any portion thereof at such price or prices or upon such terms as shall be designated in writing by said first parties, and may make conveyance of any property so sold by deeds with such conditions and covenants as said second party may deem best.

Third: Said second party is also authorized and empowered to pay all taxes, assessments and other charges which may accrue upon said property at any time, and to keep any improvements which there are now or may hereafter be upon said property insured in such amount and in such company or companies as said second party may deem best, including companies represented by second party or any of its officers, paying [1717—1387] therefor, and charging said first parties with all insurance premiums so paid and to comply with the requirements of all laws and *ordinance* pertaining to said property.

Fourth: Said second party hereby is also empowered to take any and all action which in its judgment may be necessary or proper in the matter of the assessment or collection of any taxes, special assessments or any charges upon said property or any part thereof: and said second party may take any and all other action in connection with said property, or any portion thereof, of any nature whatsoever which it may at any time deem best for the interests of said first parties.

Fifth: Second party shall have reasonable compensation for all services rendered under this instrument. Second party shall be indemnified against any and all liability of any nature whatsoever which it may incur or be subject to in the care and management of said property. Second party shall not be liable for any loss caused by error in judgment.

Sixth: Second party shall have a lien upon said real estate and each and any part thereof and upon the proceeds of all sales thereof, and upon all income therefrom, as security for any and all notes or other indebtedness or renewals thereof now owing or hereafter to become due to the Lewiston National Bank or said second party, and to secure it for all that may become due to it hereunder on account of services rendered or moneys advanced or liability of any nature incurred, with interest on such amounts at the rate of eight per cent per annum from the time of the rendering of such service, incurring of such liability, or the making of such advances, it being understood that any indebtedness of William F. Kettenbach or George H. Kester, re-

spectively, and not jointly, shall be secured by the above mentioned lien upon the undivided half interest in said property owned by the party owing such indebtedness.

Seventh: On the sale and conveyance of any part of the above described property as aforesaid all liens secured by this instrument [1718—1388] shall immediately cease upon the property so sold and conveyed, but shall remain unimpaired for the entire amount secured by this instrument upon the balance of the property and upon the proceeds of any such sales and income from property.

All net proceeds from such sales and income shall be equally paid to said William F. Kettenbach and George H. Kester. Upon payment of any such proceeds of sales or any income from said property to said George H. Kester, William F. Kettenbach or order, all liens upon such proceeds and income secured by this instrument shall immediately cease, but such liens shall remain unimpaired as against the balance of said property undisposed of and as against all income and other proceeds of sales thereof in the hands of said second party.

Eighth: At the request of either William F. Kettenbach or George H. Kester, in writing, the property herein described and all proceeds of sales and income shall be conveyed and paid back equally to said William F. Kettenbach and George H. Kester by the second party and this agreement terminated, provided all amounts due or owing to said Lewiston National Bank or second party hereunder, and all liabilities it may have incurred hereunder

shall have been fully paid, and said second party may at any time on notice to said first parties resign performance of all trust duties imposed by this instrument and shall thereupon, on payment to it, in full, of all sums due or owing to it, and all liabilities incurred by it hereunder, convey all of said property undisposed of to said William F. Kettenbach and George H. Kester, and pay over to them all proceeds of sales and income then on hand.

IN TESTIMONY WHEREOF, the said William F. Kettenbach and George H. Kester have hereunto affixed their hands and seals, and the said second party has caused its name to be set hereunto by its President and Secretary, and its seal affixed, the day and year in this instrument first above written.
[1719—1389]

WILLIAM F. KETTENBACH. [Seal]

GEORGE H. KESTER. [Seal]

IDAHO TRUST COMPANY,

By FRANK W. KETTENBACH.

President.

Witnesses:

FORREST WHITE.

RAY C. HYKE.

Attest: EDWARD C. SMITH,

Secretary.

[Corporate Seal of Idaho Trust Company.]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of July, 1907, before me, Ray Hyke, a Notary Public in and for said county, personally appeared William F. Kettenbach and George

H. Kester, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

RAY C. HYKE,

Notary Public in and for Nez Perce County, State of Idaho, [1720—1390]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of July, 1907, before me, Ray Hyke, a Notary Public in and for said county, personally appeared Frank W. Kettenbach and Edward C. Smith, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

RAY C. HYKE,

Notary Public in and for Nez Perce County, State of Idaho.

Said document was thereupon marked by the Reporter as Exhibit 72.

Mr. GORDON.—You will waive any further identification of that agreement, will you, gentlemen?

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—I will ask you if this agreement has ever been recorded, Mr. Smith? A. No, sir.

Mr. BABB.—Is that recorded in the minutes of your meetings there?

WITNESS.—Yes.

Q. It is recorded in full in the minutes of your meetings? A. Yes. [1721—1391]

Mr. GORDON.—It is stipulated by and between the parties in open court that William Dwyer and his wife Kittie E., by a deed dated December 31st, 1908, in consideration of \$1.00, conveyed to the Idaho Trust Company the east half of the southwest quarter and the west half of the southeast quarter of section 20, and the southeast quarter of section 21, in township 39 north, of range 5 east, of Boise meridian, and the southwest quarter of section 20, the southeast quarter of section 30, and the north half of the southwest quarter and the north half of the southeast quarter of section 15, township 38 north, of range 6 east, of Boise meridian, and the southeast quarter of the northwest quarter and the south half of the northeast quarter and the northeast quarter of the southeast quarter of section 15, in township 38 north, of range 5 east, of Boise meridian, containing 960 acres, and that the same was recorded at the request of the Lewiston Abstract Company in the office of the Recorder of Nez Perce County, Idaho, January 4th, 1909, in book 99 of deeds, at page 464.

Mr. BABB.—Subject to objections as to irrelevancy or immateriality if we find that it has nothing to do with it.

Mr. GORDON.—Yes; and you waive any further identification of the deed.

Mr. TANNAHILL.—Yes.

Mr. BABB.—Yes.

Mr. GORDON.—And it is also stipulated by and between the parties in open court that William Dwyer, and Kittie E. Dwyer, his wife, made a deed dated December 31st, 1898, conveying to the Idaho Trust Company, in consideration of \$1.00, the south half of lot 8, in block "X," in Vineland, Asotin County, Washington, according to the recorded plat thereof, except one and one-half acres sold to Thomas Root. The said deed was properly executed and acknowledged, and recorded at the request of the Idaho Trust Company in the office of the Auditor and Recorder of Asotin County, Washington, on the 5th day of January, 1909.

Mr. BABB.—Subject to objections as to immateriality and irrelevancy. [1722—1392]

Mr. GORDON.—We offer in evidence the agreement dated December 31st, 1908, made by and between William Dwyer, of the first part, and the Idaho Trust Company, of the second part, which has been identified by the witness, Mr. Smith, which reads as follows: [1723—1393]

[Exhibit No. 73.]

THIS INSTRUMENT, Made this 31st day of December, 1908, between William Dwyer and Kittie E. Dwyer, his wife, parties of the first part, and IDAHO TRUST COMPANY, a corporation duly organized and created as such under and in accordance with the laws of the State of Idaho, and which has complied with the requirements of Section 2 of Senate Bill No. 67 of the Sixth Session of the Legis-

lature of the State of Idaho.

WITNESSETH, That whereas, said parties of the *first have* by deeds of even date herewith conveyed to said second party the following described real estate, situate in Nez Perce County, State of Idaho, to wit:

The East Half of the Southwest Quarter and West Half of the Southeast Quarter of Section Twenty (20) and the Southeast Quarter of Section Twenty-one (21), in Township Thirty-nine (39) North, of Range Five (5) East of Boise Meridian; the Southwest Quarter of Section Twenty (20), the Southeast Quarter of Section Thirty (30), the North Half of the Southwest Quarter and the North Half of the Southeast Quarter of Section Fifteen (15), in Township Thirty-eight (38) North, of Range Six (6) East of Boise Meridian, and the Southeast Quarter of the Northwest Quarter, the South Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Fifteen (15) in Township Thirty-eight (38) North of Range Five (5) East of Boise Meridian, containing in all 960 acres; and

The following described real estate, situate in Asotin County, State of Washington, to wit:

The South Half of Lot Eight (8) in Block "X" in Vineland, Asotin County, Washington, according to the recorded plat thereof, except one and one-half acres sold to Thomas J. Root.

The parties hereto hereby define the terms, conditions and trusts upon which said second party shall hold the title to said real estate so conveyed, as fol-

lows, to wit:

First. Said second party shall hold the title to the said real estate in trust for the said first parties, their heirs, executors, [1724—1394] administrators and assigns.

Second. Said second party shall have full power and authority to make sales from time to time of the property described above or any portion thereof at such price or prices, and upon such terms as shall be designated in writing by said parties of the first part, and may make conveyance of any property so sold by deeds with such conditions and covenants as said second party may deem best.

Third. Said second party may, in order to effect sale of said premises from time to time place the same or such part or parts thereof as to said second party may seem best in the hands of real estate agents or brokers, and may pay such real estate agents or brokers commissions from time to time, not exceeding five per cent.

Fourth. In case of any sales made by second party without the intervention of any broker or real estate agent, said second party shall be entitled to a reasonable compensation for services and expenses in making such sale or sales, not exceeding five per cent.

Fifth. If any abstracts of title are required by the parties of the first part to property sold as herein provided, said second party is authorized to make said abstracts of title, deliver same to purchaser or purchasers, charging us with a reasonable sum for

the services of said second party in making such abstracts.

Sixth. At the request of the first parties the property herein described, or such portion thereof as may not have been sold as herein provided shall be conveyed back to them by the party of the second part and this agreement terminated at any time, provided all amounts due to said party of the second part hereunder or the Lewiston National Bank, shall have been fully paid.

Seventh. Said party of the second part is also authorized and empowered to pay all taxes, assessments and other charges which may accrue upon said property at any time, and to keep any improvements which there are now or may hereafter be upon said property insured in *in* such amount and in such company or companies as said second party [1725—1395] may deem best, paying and charging us *will* all insurance premiums as paid.

Eighth. Said second party hereby is also empowered to take any and all action which, in its judgment, may be necessary or proper in the matter of the assessment or collection of any taxes, special assessments or any charges upon said property or any parts thereof, and said second party may take any and all other action in connection with said property or any portion thereof of any nature whatsoever which it may at any time deem best for our interest, as the owner of the property, and shall have reasonable compensation for all services rendered under this instrument, and shall be indemnified against any and all liability of any nature whatso-

ever which it may incur or be subjected to in the care and management of said property.

Ninth. Said second party shall have a lien upon the said real estate and each and any part thereof, and upon the proceeds of all sales thereof and upon all income therefrom, to secure it for all that may become due to it hereunder on account of services rendered or moneys advanced or liability of any nature incurred, with interest on such amounts at the rate of ten per cent per annum from the time of the rendering of such services or the making of such advances. And also to secure the payment to it or the Lewiston National Bank of the sum of Fourteen Thousand Fifty-six (\$14,056.00) Dollars this day loaned to us by said Lewiston National Bank, together with interest thereon from the date hereof until paid at the rate of ten per cent per annum, payable semi-annually at the office of the second party or said Lewiston National Bank, according to the promissory note of said first parties executed and payable to said Lewiston National Bank in the principal sum of Fourteen Thousand Fifty-six (\$14,056.00) Dollars of even date herewith, or any renewal thereof.

Tenth. Said second party shall also have a lien upon the said real estate and each and every part thereof, and the proceeds of any sales thereof and upon all income therefrom, to secure the payment of [1726—1396] any and all other advances or loans which may be made by the said second party or the Lewiston National Bank to said first parties from time to time and at any time hereafter to an amount

not exceeding in the aggregate, exclusive of said sum of Fourteen Thousand Fifty-six (\$14056.) Dollars, the further sum of Three Thousand (\$3,000.) Dollars, together with interest on all such loans or advances from the time of making thereof from time to time, until paid, at the rate of ten per cent per annum, payable semi-annually.

Eleventh. All sums secured hereby shall be payable in Gold Coin of the United States of America of the present standard of weight and fineness, and at the office of said second party or the Lewiston National Bank, in Lewiston, Idaho.

Twelfth. On the sale and conveyance of any part of the above described property as aforesaid, all liens secured by this instrument shall immediately cease upon the property so sold and conveyed but shall remain for the entire amount secured by this instrument upon the balance of the property unimpaired, and upon the proceeds of any such sales. Upon the payment of any such proceeds of sales or any income from said property, to said first parties or to their order, all lien upon such proceeds and income secured by this instrument shall immediately cease, but the same shall remain unimpaired as against the balance of said property undisposed of, and as against all other income and proceeds of sales thereof in the hands of said second party.

IN TESTIMONY WHEREOF, The said first parties have hereunto affixed their hands and seals, and the second party has caused its name to be set hereto by its President and Secretary and its seal

affixed, the day and year in this instrument first above written.

WILLIAM DWYER.

KITTIE E. DWYER.

IDAHO TRUST COMPANY,

By FRANK W. KETTENBACH,

President.

By EDWARD C. SMITH,

Secretary.

Witnesses:

J. R. TURNBULL.

RAY C. HYKE.

[Corporate Seal of Idaho Trust Company.]

[1727—1397]

State of Idaho,

County of Nez Perce,—ss.

On this 31st day of December, 1908, before me, Ray C. Hyke, a Notary Public in and for said County, personally appeared William Dwyer and Kittie E. Dwyer, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same, and on this 31st day of December, 1908, before me, the officer above described, personally appeared said Kittie E. Dwyer, known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

(Testimony of Edward C. Smith.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.

State of Idaho,
County of Nez Perce,—ss.

On this 31st day of December, 1908, before me, Ray C. Hyke, a Notary Public in and for said County, personally appeared Frank W. Kettenbach and Edward C. Smith, known to me to the President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] RAY C. HYKE,
Notary Public in and for Nez Perce County, Idaho.
[1728—1398]

The Reporter thereupon marked said document as Exhibit 73.

Mr. GORDON.—You will waive any further identification of the document, gentlemen?

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

Mr. BABB.—Q. Does this cover all of the Dwyer indebtedness?

A. Well, it covers—it practically includes it, yes.

Q. How much? A. \$20,000.00.

(Testimony of Edward C. Smith.)

Q. Haven't you got a carbon copy of this?

A. I don't think so.

Mr. GORDON.—Q. This paper which you have identified has never been recorded? A. No, sir.

Q. And this is the one that you say is not referred to in the minutes of the company at all?

A. Yes, sir; it hasn't been recorded in the minutes.

At this time an adjournment was taken until tomorrow morning at ten o'clock A. M. [1729—1399]

On Saturday, the 10th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Offer of Original Note of Clarence W. Robnett.]

Mr. GORDON.—We offer in evidence a note made by George Ray Robinson, dated June 26, 1903, for the sum of \$728.00, due one year after date, bearing interest at the rate of one per cent per month, payable to the order of Clarence W. Robnett, and endorsed "Pay to W. F. Kettenbach without recourse. Clarence W. Robnett."

Mr. TANNAHILL.—The defendants severally waive any further identification of the note or the signature.

Said note was thereupon marked by the Reporter as Exhibit 74.

[Testimony of R. Clyde Beach, for Complainant.]

R. CLYDE BEACH, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of R. Clyde Beach.)

Direct Examination.

(By Mr. GORDON.)

Q. Will you please state your full name?

A. My legal name is R. Clyde Beach. I don't part that in the middle only when necessary.

Q. How long have you resided at Lewiston, Mr. Beach? A. Sixteen years.

Q. And you are engaged here in business, are you?

A. Yes, sir.

Q. Are you in any way connected with the Lewiston National Bank? [1730—1400]

A. I am a director.

Q. And how long have you been a director?

A. I don't remember—a good many years.

Q. Well, the last ten years?

A. I believe so, yes.

Q. Continuously? A. Yes.

Q. Who was the president of the bank when you first became a director? A. W. F. Kettenbach.

Q. And that is the William F. Kettenbach who is a defendant in these equity causes? A. Yes, sir.

Q. And who was the cashier?

A. George Kester.

Q. Now, do you remember how long they remained as president and cashier, respectively, or the date that they discontinued their services with the bank?

A. No, I don't remember the dates.

Q. It was some time in July, 1907, was it not?

A. Well, I suppose so, yes.

Q. During their continuance in office, in whose control was the management of the affairs of the

(Testimony of R. Clyde Beach.)

bank? A. In the president and cashier.

Q. And, Mr. Beach, did you know that in the spring of 1907, that Mr. William F. Kettenbach and Mr. George H. Kester and Mr. William Dwyer were tried and convicted in the Federal Court at Moscow, Idaho, on a charge of conspiracy to defraud the Government of its timber lands?

Mr. TANNAHILL.—We object to the question on the ground that it is irrelevant, incompetent and immaterial.

Mr. GORDON.—That is just a formal objection that goes in the record. Will you answer? [1731—1401] A. Yes, sir.

Q. And shortly thereafter they resigned their respective offices in the bank? Is that correct?

A. Yes, sir. Well, now, did they? I suppose they resigned, or it came about through the consolidation, didn't it?

Q. Why, I don't know. That is what I want to know. They were sentenced on these charges on the 17th of June, 1907, and they resigned between the first of July and the 10th, as I understand it.

A. I would like to explain in this way: that I haven't been a regular attendant at those meetings. I have been away and haven't given, possibly, as much attention to that as other people have, and my memory may be faulty in some of these things. I will get just as close to it as I can.

Q. Well, as far as the real dates are concerned, I will put the record in for that. I just want your general remembrance. Now, to be absolutely fair

(Testimony of R. Clyde Beach.)

about it, you also remember that the three gentlemen I have named were tried on similar charges, or the same charges, in Boise, in February or March last, and were acquitted. You know that, also?

A. Yes, sir.

Q. And that the conviction that was had in the spring of 1907 was later—the conviction and judgment that was had against these gentlemen in the spring of 1907 was later reversed by the Circuit Court of Appeals? A. Yes, sir.

Q. It was pretty generally known in the community that these three gentlemen were being investigated and tried, was it not, Mr. Beach?

A. Yes, sir.

Q. Now, did you ever negotiate a loan for Mr. William F. Kettenbach and Mr. George H. Kester on any of their timber lands? A. No. [1732—1402]

Q. Did you ever attempt to? A. No.

Q. Did you ever have anything to do with them negotiating a loan?

A. No. We negotiated a loan, but—

Q. Well, if you will tell the incident that you refer to?

A. Well, wait. I may have to change that. I can't tell how long ago, possibly two years ago, there was a half section of land up—I don't remember the description—which had to be scripped, and I furnished the money and took a third of the land, which I have title to, and Mr. Kester and Mr. Kettenbach borrowed the balance from me. Now, I suppose I

(Testimony of R. Clyde Beach.)

did negotiate that loan. I made the loan myself.

Q. Well, I haven't reference to that. What I refer to is whether or not you have any recollection of a loan that was made by some Boston bankers—I mean Portland bankers—to Mr. William F. Kettenbach and Mr. George H. Kester, on their timber lands?

A. I have absolutely no recollection of anything of that kind.

Q. And that the bankers became somewhat nervous about it, and came to Lewiston, and you and Mr. Frank W. Kettenbach met those bankers relative to that loan. Do you know anything about that?

A. I have absolutely no recollection of anything of that kind.

Q. You never heard of it?

A. To the best of my recollection it is absolutely new to me. I don't recollect anything of it.

Q. After Mr. William F. Kettenbach and Mr. George H. Kester retired from the Lewiston National Bank, they were immediately succeeded by Mr. Frank W. Kettenbach as the president and Mr. Edward C. Smith as the cashier, were they not?

A. Yes, sir.

Q. And did they also have control of the management of the affairs of that bank as their predecessors had had? A. Yes.

Q. Did you ever become the endorser on a note or any other securities [1733—1403] for Kester and Kettenbach, other than the scrip transaction you have related?

(Testimony of R. Clyde Beach.)

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—To the best of my recollection, I never did.

Mr. GORDON.—Q. And you have no recollection of any loan that Kester and Kettenbach were endeavoring to negotiate outside of Lewiston, that you were called upon to either vouch for the security, or for Kester and Kettenbach or either of them?

Mr. TANNAHILL.—The same objection.

WITNESS.—I can't recall anything at this time.

Mr. GORDON.—Well, that's all.

Mr. TANNAHILL.—That's all. [1734—1404]

**[Testimony of Edward C. Smith, for Complainant
(Recalled).]**

EDWARD C. SMITH, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled in behalf of the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Yesterday evening, Mr. Smith, I asked if you would work out the transaction by which the stock of the Lewiston National Bank was purchased by the Idaho Trust Company. I understood that it was an exchange of Idaho Trust Company stock for Lewiston National Bank stock; and I will appreciate it if you will tell us the shares of stock that were exchanged, and whose stock it was that was exchanged, and who of the stockholders of the Lewiston National Bank received the stock.

(Testimony of Edward C. Smith.)

A. I have here a statement showing the ownership of Idaho Trust Company stock before January 7th, 1908, and also a statement showing the ownership of the same stock after that date, which, I think, covers your question. (Handing same to Mr. Gordon.)

Q. Now, this is headed before January 7th, 1908, and after January 1st, 1908.

A. Well, that ought to be the 7th. I was rushing things this morning. (Making correction.) There, that's it.

Q. And this is what your Stock Register shows, is it?

A. That is all taken from the Stock Register, yes, sir,—the book I had here last night.

Mr. GORDON.—I will ask that that be copied into the record.

Said statement was thereupon marked by the Reporter as Exhibit 75, and the same is in the words and figures following, to wit: [1735—1405]

Plaintiffs' Exhibit No. 75.

PLEASE EXAMINE AND REPORT WITHOUT DELAY.

Lewiston, Idaho, ——— 191——

Stock Ownership

Idaho Trust Company.

In account with Idaho Trust Company.

	Before Jan. 7-08.	On Jan. 7-08.
Frank W. Kettenbach	483	396½
Sarah J. Simpson	293	146½
Edward C. Smith	220	110

1950 *The United States of America*

A. Freidenrich	120	75
Geo. A. Smith	133	66½
William F. Kettenbach	130	235
Elizabeth White	60	75
Grace K. Pfafflin	65	322½
O. A. Kjos	160	80
W. W. Brown	20	10
C. Weisgerber	26	23
S. Salsberg	30	15
M. Glatigny	40	20
Frank McGrane	50	25
S. G. Isaman	30	15
Amy D. Kettenbach	8	4
E. L. Alford	15	7½
Jas. E. Babb	10	5
Marie Kettenbach	1	
Alfred D. Kettenbach	1	
Matthew Scully	10	5
Wm. A. Libert	50	75
Mrs. Henrietta Freedman	20	10
M. Donzac	10	5
Elizabeth Kettenbach	15	7½
R. C. Beach		5
C. C. Bunnell		35
Robert Schleicher		40
Ira Small		20
John B. Hess		5
Harriet F. Morris		15
James Lambert		40
J. Alexander		90
Amy D. Kettenbach, Trustee		1

(Testimony of Edward C. Smith.)

Jo. Richards	2	
J. P. M. Richards	3	
Dora B. Smith	10	
	<hr/>	<hr/>
	2000 Shares	2000 Shares

[1736—1406]

Mr. GORDON.—Q. Now, this list which you have produced and identified, showing the owners of the stock of the Idaho Trust Company on January 7th, 1908, and the owners of that stock after January 7th, 1908, and the number of shares each shareholder held on the respective dates, which has been read into the record and offered in evidence, I will ask you to explain what is meant by the ownership of the stock before January 7th and after January 7th. In other words, I understand that this is a showing that certain shareholders of the Idaho Trust Company, on January 7th, 1908, owned a certain number of shares of stock, and that immediately after that date their shares of stock in the Idaho Trust Company were immediately reduced. Now, what became of the difference in the number of shares of stock that they held January 7th, 1908, and that that they held immediately after that date?

A. I would like to make one little explanation of one little point before I answer that question. That shows “after.” That should be “on January 7th, 1908.”

Q. Well, then change it to “on.”

A. That is what it is—“on.” (Making correction.) In answer to your last question, the totals

(Testimony of Edward C. Smith.)

here you will notice are the same.

Q. Yes.

A. The stock on January 7th—the stock before January 7th, the stock of the Idaho Trust Company was worth \$100.00 per share. On January 7th it was worth \$200.00 per share.

Q. Then, you just increased the—

A. —doubled the value of the stock.

Q. Doubled the value of your capital stock?

A. No, sir—the surplus, which is equivalent to stock.

Q. Well, that increased the value of the stock 100 per cent? A. Yes, sir.

Q. And that occurred on the 7th of January?

A. About—yes. Yes, sir. [1737—1407]

Q. Then, the first name you have here is that, before January 7th, 1908, Frank W. Kettenbach owned 483 shares of the Idaho Trust Company stock, and on January 7th, 1908, he owned 396 shares of stock. Now, what became of the difference in the amount of stock of Frank Kettenbach?

A. You will notice all the way through here—down here, see,—some of these didn't have any Idaho Trust Company stock before. Those are people who had Lewiston National Bank stock before. Some of these stockholders had stock in both institutions before.

Q. Well, now, what did Mr. Frank W. Kettenbach get for the 100 shares of stock that he turned in, to reduce his from 483 to 396½? What did he do with that?

(Testimony of Edward C. Smith.)

A. Well, Mr. Kettenbach had some—the reason was he had a little stock in trust there that belonged to the stockholders, was the reason his wasn't divided up equally. I can't remember exactly the occurrence of that. It was only a small amount, however; but he had Lewiston National Bank stock for a large portion of it.

Q. Well, now, take your own stock. Before January 7th, Edward C. Smith had 220 shares of Idaho Trust Company stock? A. Yes, sir.

Q. On January 7th, 1908, he had just half that amount—110 shares? A. Yes, sir.

Q. Now, what did you do with your other 110 shares?

A. I gave it to—I relinquished it to a stockholder of the Lewiston National Bank.

Q. Well, did you relinquish it to the stockholder, or did you relinquish it to the treasury of the Idaho Trust Company?

A. No; to the stockholder. The stockholder of the Lewiston National Bank got that 110 shares.

Q. You don't know which one got it? You just put into a pool, did you? [1738—1408]

A. Oh, yes; it was all just put into a pool. There it is. It was all just divided up, you know, to the proper ownerships. See down here, you will notice down here a great many of these here are not listed under the Idaho Trust—are not listed under the former ownership. That is caused by their owning Lewiston National Bank stock and not Idaho Trust

(Testimony of Edward C. Smith.)

stock. Some of them are a great deal larger. Now, for—

Q. Miss Grace K. Pfaffin?

A. Yes, there is a very noticeable one. She had 65 shares in the Idaho Trust Company before, and she had 322½ in the Idaho Trust Company afterwards.

Q. Now, was any stock issued to the stockholders of the Lewiston National Bank in lieu of their Lewiston National Bank stock that they relinquished?

A. Not a dollar. The only stock that was held by the Lewiston National Bank stockholders was that that was held by directors.

Q. No—you don't understand me. There was \$100,000.00 worth of stock of the Lewiston National Bank when this transaction occurred; is that correct?

A. Par value, yes—par.

Q. And the Idaho Trust Company consolidated, and in that way 900 shares of the Lewiston National Bank stock became the stock of the Idaho Trust Company? A. Yes.

Q. Now, in lieu of that stock did the Idaho Trust Company issue to the shareholders of the Lewiston National Bank an equal number of shares of Idaho Trust Company stock?

A. The stockholders did it, of the Idaho Trust Company.

Q. The stockholders of the Idaho Trust Company put a certain number of shares of their stock into a pool, and that stock was re-issued to the shareholders of the Lewiston National Bank?

(Testimony of Edward C. Smith.)

A. Yes, sir. [1739—1409]

Q. The stock was actually issued to them?

A. Just as you see it there, yes, sir.

Q. That is Idaho Trust Company stock that was issued?

A. Yes, sir. That is all—that statement is Idaho Trust Company stock only. That is all I intended to make a statement of.

Q. Now, when we were here yesterday evening we were inquiring as to who the holders of the Idaho Trust Company stock were in July and September, 1907. I don't know whether you put that into the record or not; but is that practically the same as what you show here before January, 1908,—the number of shares of each person?

A. Practically, yes. I believe it is identically the same, but it is practically the same.

Q. Mr. Smith, is the stock of the Idaho Trust Company at the present date held by the same stockholders as are set out on this exhibit here that has been offered in evidence?

A. Practically the same; I think there have been some changes.

Q. And have they continued practically the same ever since? A. Practically the same, yes, sir.

Q. With some few changes? There might be one here and there? A. Very few changes.

Q. Now, do you know how much stock Mr. Frank Kettenbach owns to-day? Does he own—

A. Well, I can get it if you will let me go down on the street—

(Testimony of Edward C. Smith.)

Q. Oh, I just want to know practically. Has it been increased? A. It has been increased.

Q. How much? Do you know?

A. Oh, I can't tell you.

Q. Well, 10 shares, or 200 shares?

Mr. BABB.—Oh, I object to questions of that kind.

Mr. GORDON.—Well, let him get the book, then, and we will find out.

WITNESS.—Is there anything else you want besides that stock-book? [1740—1410]

Mr. GORDON.—That is all I know of now.

(The witness retired from the room, and returned in a short time.)

Q. Now, just turn to that and tell me practically what it is.

A. Well, I can give it to you exactly. (Examining book, and making notations therefrom.)

Q. Can you tell the number of shares of stock held by Mr. Frank W. Kettenbach at the present date?

Mr. BABB.—I object to that as immaterial and irrelevant, and I also object to all with reference to which he is inquiring, as being incompetent, irrelevant and immaterial, and entirely outside of the issues of the case, and I move to strike it out.

Mr. GORDON.—Answer the question.

A. 440½.

Q. Mr. Smith, you have known the defendants Kester, Kettenbach and Dwyer for a number of years, have you not? A. Yes, sir.

Q. And you also know, do you not, that they were tried and convicted at Moscow, in the spring of 1907,

(Testimony of Edward C. Smith.)

for conspiracy to defraud the Government of its timber lands?

Mr. BABB.—I object to that as immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And that was very generally known here in Lewiston, was it not?

Mr. BABB.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. You also know that the judgment of conviction had in the spring of 1907 was reversed by the appellate court some time later, do you not? A. Yes, sir.

Q. And that they were subsequently tried on a conspiracy charge [1741—1411] at Boise, in February and March of 1910, and were acquitted?

A. Well, I know practically.

Q. I mean from general talk and general conversation? A. Yes.

Q. Now, I want to put in some of those other notes in evidence that I didn't put in last night that you had here. Now, this note that you produce here, dated February 5, 1910, signed W. F. Kettenbach, and payable on demand to the Idaho Trust Company in the sum of \$9,544.71 is that note in renewal of any other transaction? A. No, sir.

Q. It is an entirely different transaction from the transactions mentioned in the agreement that we introduced here yesterday?

A. Yes, sir. Are these what you want to see? (Exhibiting three notes to Mr. Gordon.)

(Testimony of Edward C. Smith.)

Q. Yes. (The witness handed said notes to Mr. Gordon.)

Q. Have you produced here all of the notes that are held by the Idaho Trust Company of George H. Kester's?

A. All the notes that are in force.

Q. Well, what do you mean by that?

A. Well, all that have not been cancelled.

Q. And of William Dwyer and Kittie E. Dwyer?

A. Yes, sir.

Q. And of William F. Kettenbach?

A. Yes, sir.

Q. Or any of them jointly—Kester and Kettenbach? A. No, sir.

Q. You haven't any? A. I haven't any.

Q. Except what you have produced here?

A. Yes, sir.

Q. You say "I"—you mean the Idaho Trust Company? A. Yes. [1742—1412]

[Stipulation as to Lewiston National Bank.]

Mr. GORDON.—It is stipulated by and between the parties hereto in open court that the Lewiston National Bank, at Lewiston, Idaho, was incorporated under the laws of the United States relating to national banks May 23, 1883, for a period of twenty years, with a capital stock of \$50,000.00; that said Articles of Incorporation were renewed May 23, 1903, for a further period of twenty years; that the original officers of the Lewiston National Bank were John Braerley, president, Jasper Rand, vice-president, Nelson W. Braerley, cashier, William F. Ket-

tenbach, assistant cashier; that the directors of said bank for the year 1900 were:

	Number of Shares.
C. C. Bunnell.....	30
J. Alexander, V. P.....	20
B. F. Morris.....	10
W. F. Kettenbach, Pres't.....	215
Grace K. Pfafflin.....	195
Elizabeth White	20
Geo. H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1901 were:

C. C. Bunnell.....	30
J. Alexander, V. P.....	20
B. F. Morris.....	10
R. C. Beach.....	10
Grace K. Pfafflin.....	195
W. F. Kettenbach, Pres't.....	205
Geo. H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names. [1743—1413]

That the directors of said banking institution for the year 1902 were :

W. F. Kettenbach, President.....	205
Grace K. Pfafflin.....	195
C. C. Bunnell.....	30
J. Alexander, Vice-President.....	20

B. F. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1903 were:

W. F. Kettenbach, President.....	195
Grace K. Pfafflin.....	195
C. C. Bunnell.....	30
J. Alexander, Vice-President.....	20
J. B. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1904 were:

W. F. Kettenbach, President.....	195
Grace K. Pfafflin.....	195
J. Alexander, V. P.....	20
C. C. Bunnell.....	30
J. B. Morris.....	10
R. C. Beach.....	10
George H. Kester, Cashier.....	10

[1744—1414]

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on January 12, 1905, the capital stock of said

bank was increased to \$100,000.00, and a dividend of 100 per cent was declared, to enable the stockholders to take new issue of stock; that the number of directors was increased from seven to eleven. Owing to the uncertainty of the status of the new stockholders to become directors, no election was held, and the old directors held over. That on February 6, 1905, additional directors were elected as follows: O. E. Guernsey, with 20 shares of stock, George H. Storer, with 15 shares of stock, Lester M. Coffin, with 10 shares of stock, and William A. Libert, with 50 shares of stock.

That the directors for the year 1906 were:

W. F. Kettenbach, President.....	285
Grace K. Pfafflin.....	250
J. Alexander, V. P.....	100
C. C. Bunnell.....	45
J. B. Morris.....	10
R. C. Beach.....	15
William A. Libert.....	60
O. E. Guernsey.....	10
John W. Givens.....	28
Aaron Friedenrich.....	25
George H. Kester, Cashier.....	50

and the number of shares of stock held by each director was the number set out opposite their respective names.

That the directors of said banking institution for the year 1907 were:

W. F. Kettenbach, President.....	285
Grace K. Pfafflin.....	250

J. Alexander, V. P.....	100
C. C. Bunnell.....	45
J. B. Morris.....	10
William A. Libert.....	60
O. E. Guernsey.....	10
John W. Givens.....	55
Aaron Friedenrich.....	25
R. C. Beach.....	15
George H. Kester, Cashier.....	50

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on July 8th, 1907, William F. Kettenbach resigned as President, and George H. Kester resigned as director and cashier, their resignations to take effect immediately; that C. W. Robnett resigned as bookkeeper, his resignation to take effect August 1st, 1907.

That on July 8th, 1907, Frank W. Kettenbach was elected president of said bank.

That on August 12, 1907, it was resolved to consolidate the stock interests of the Lewiston National Bank and the Idaho Trust Company.

That on July 30, 1907, E. C. Smith was elected a director of the Lewiston National Bank, he holding 10 shares of stock; and on October 8th, 1907, E. C. Smith was elected cashier of the Lewiston National Bank.

That the directors elected for the year 1908 were:

Frank W. Kettenbach, President.....	10
J. Alexander, Vice-President.....	10
Edward C. Smith, Cashier.....	10

William A. Libert	10
O. E. Guernsey	10
J. B. Morris	10
C. C. Bunnell	10
R. C. Beach	10
John W. Givens	10

[1746—1416]

and the number of shares of stock held by each director was the number set out opposite their respective names.

That on January 14th, 1908, a resolution of the board of directors was passed to reduce the number of directors to nine, and J. E. Chapman was elected assistant cashier.

That the directors of said banking institution elected for the year 1909 were:

Frank W. Kettenbach.....	10
O. A. Kjos.....	10
J. Alexander.....	10
William A. Libert.....	10
J. B. Morris.....	10
Edward C. Smith.....	10
R. C. Beach.....	10
John W. Givens.....	10
O. E. Guernsey.....	10

and the number of shares of stock held by each director was the number set out opposite their respective names.

It is stipulated by and between the parties hereto in open court that the stock of the Lewiston National Bank, in the year 1904, was held by the following named persons, and that the various persons owned

and held the number of shares set out opposite their respective names:

W. F. Kettenbach.....	195	Shares
Grace K. Pfafflin.....	195	“
C. C. Bunnell.....	30	“
J. Alexander.....	20	“
Elizabeth White	20	“
J. B. Morris.....	10	“
B. F. Morris, Est.....	10	“
R. C. Beach.....	10	“
George H. Kester	10	“

[1747—1417]

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1905, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

J. Alexander.....	100	Shares
R. C. Beach.....	15	“
C. C. Bunnell.....	45	“
J. B. Morris.....	10	“
O. E. Guernsey.....	10	“
Albert Leiber.....	5	“
O. F. Frenzel.....	5	“
W. F. Kettenbach.....	285	“
George H. Kester.....	10	“
R. Grostein.....	15	“
I. N. Smith.....	10	“
William A. Libert.....	60	“
Grace K. Pfafflin.....	290	“
Harriet F. Morris.....	15	“

Elizabeth White.....	35	“
M. Donzae.....	25	“
Aaron Frederick.....	25	“
George H. Storer.....	15	“
Julius Kuehn.....	10	“
E. H. Libby.....	15	“

It is further stipulated by and between the parties hereto in open court that the stock of the Lewiston National Bank, in the year 1906, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

W. F. Kettenbach.....285 Shares

[1748—1418]

W. F. Kettenbach, Trustee.....	25	“
Grace K. Pfafflin.....	295	“
George H. Kester.....	40	“
R. C. Beach.....	15	“
J. B. Morris.....	10	“
Harriet Morris.....	35	“
J. Alexander	100	“
C. C. Bunnell.....	45	“
O. E. Guernsey.....	10	“
William A. Libert.....	60	“
Julius Kuehn.....	10	“
John W. Givens.....	55	“
Elizabeth White.....	35	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1907, was held by the following named persons, and that the various persons owned and held the number of shares set out

opposite their respective names:

Grace K. Pfafflin.....	250	Shares
George H. Kester.....	50	“
R. C. Beach.....	15	“
J. B. Morris.....	135	“
Elizabeth White.....	35	“
C. C. Bunnell.....	45	“
Harriet F. Morris.....	15	“
A. Freidenrich.....	25	“
I. N. Smith.....	10	“
E. H. Libby.....	15	“
W. A. Libert.....	60	“
W. F. Kettenbach.....	170	“
J. Alexander.....	100	“

[1749—1419]

O. E. Guernsey.....	10	“
Julius Keuhn.....	10	“
John W. Givens.....	55	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1908, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Idaho Trust Company.....	910	Shares
F. W. Kettenbach.....	10	“
J. Alexander.....	10	“
J. B. Morris.....	10	“
J. W. Givens.....	10	“
C. C. Bunnell.....	10	“
O. E. Guernsey.....	10	“
Ed. C. Smith.....	10	“

R. C. Beach.....	10	“
Wm. A. Libert.....	10	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1909, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Idaho Trust Company.....	910	Shares
F. W. Kettenbach.....	10	“
E. C. Smith.....	10	“
O. E. Guernsey.....	10	“
J. B. Morris.....	10	“
R. C. Beach.....	10	“
[1750—1420]		
O. A. Kjos.....	10	“
J. W. Givens.....	10	“
J. Alexander.....	10	“
Wm. A. Libert.....	10	“

It is further stipulated by and between the parties hereto, in open court, that the stock of the Lewiston National Bank, in the year 1910, was held by the following named persons, and that the various persons owned and held the number of shares set out opposite their respective names:

Union Securities Co.....	870	Shares
Wm. Thompson.....	10	“
J. K. McKornack.....	10	“
F. A. Blackwell.....	10	“
T. J. Humbird.....	10	“
O. A. Kjos.....	10	“
J. Alexander.....	10	“

F. W. Kettenbach.....	10	“
E. C. Smith.....	10	“
O. E. Guernsey.....	10	“
R. C. Beach.....	10	“
John W. Givens.....	10	“
Wm. A. Libert.....	10	“
J. B. Morris.....	10	“

It is hereby stipulated by and between the parties hereto, in open court, that with reference to all matters of fact inserted in the record by stipulation, the same having been stipulated occasionally on the assertion of correctness by one party without the other party having had an opportunity to verify it, it is agreed that in case of discovery of mistake by any party of any of the matters so stipulated, [1751—1421] an opportunity shall be afforded for correction upon the record.

[Stipulation as to Recording Instruments in Latah County.]

It is further hereby stipulated and agreed by and between the parties hereto, in open court, that the following instruments were properly executed and acknowledged, and were filed for record in the office of the county recorder of Latah County, State of Idaho and were thereafter recorded in said Latah County, State of Idaho, as follows:

FRED W. SHAEFFER.

Description: E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 27, T. 40 N., R. 1 W., B. M.

UNITED STATES

to

FRED W. SHAEFFER.

Receiver's Receipt.

Dated July 25, 1902.

Recorded June 8, 1903, in Book 2, p. 72.

Certificate No. 3795.

FRED W. SHAEFFER, Bachelor,

to

W. F. KETTENBACH and GEORGE H. KESTER.

Warranty Deed.

Dated July 26, 1902.

Recorded June 8, 1903, in Book 35 of Deeds, p. 411.

Consideration, \$800.00.

Acknowledged before H. K. Barnett, a Notary Public of Nez Perce County, Idaho, July 26, 1902.

UNITED STATES

to

FRED W. SHAEFFER.

Patent.

Dated January 28, 1904.

Recorded March 26, 1904, in Book 31 of Deeds, p. 206.

[1752—1422]

ROWLAND A. LAMBDIN.

Description: SW. $\frac{1}{4}$ Sec. 29, T. 42 N., R. 1 W., B. M.

UNITED STATES

to

ROWLAND A. LAMBDIN.

Receiver's Receipt.

Dated July 22, 1902.

Recorded June 8, 1903, in Book 2, p. 72.

1970 *The United States of America*

ROWLAND A. LAMBDIN, and MARION P., His
Wife,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Dated July 22, 1902.

Recorded July 8, 1903, in Book 35 of Deeds, p. 402.

Consideration, \$800.00.

Acknowledged before H. K. Barnett, a Notary Pub-
lic of Nez Perce County, Idaho, July 22, 1902.

UNITED STATES

to

ROWLAND A. LAMBDIN.

Patent.

Dated January 28, 1904.

Recorded March 19, 1904, in Book 31 of Deeds, p. 200.

WM. F. KETTENBACH and MARY JANE, His
Wife, and GEORGE H. KESTER, and EDNA
P., His Wife,

to

POTLATCH LUMBER COMPANY, a Corpora-
tion.

Warranty Deed.

Dated June 17, 1903.

Recorded June 18, 1903, in Book 39 of Deeds, p. 99.

Consideration, \$6,000.00.

Acknowledged before H. K. Barnett, a Notary Pub-
lic of Nez Perce County, June 17, 1903.

Conveying the tracts of land described in the Re-

vs. William F. Kettenbach et al. 1971

ceiver's Receipt issued to the said Lambdin and
the said Shaeffer. [1753—1423]

IVAN R. CORNELL.

Description: Lots 6 and 7, and E. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 27,
T. 40 N., R. 1 W., B. M.

UNITED STATES

to

IVAN R. CORNELL.

Receiver's Receipt.

Dated Sept. 10, 1903.

Recorded Sept. 14, 1903, in Book 2 of Receipts, p. 90.

UNITED STATES

to

IVAN R. CORNELL.

Patent.

Dated Sept. 9, 1904.

Recorded August 15, 1906, in Book 43 of Deeds,
p. 139.

IVAN R. CORNELL, Single,

to

W. F. KETTENBACH and GEORGE H. KES-
TER.

Warranty Deed.

Dated Sept. 29, 1903.

Recorded October 10, 1903, in Book 41 of Deeds, p. 28.

Consideration, \$1,000.00.

Acknowledged before Otto Kettenbach, a Notary
Public for Nez Perce County, Idaho, September
29, 1903.

GEORGE H. KESTER and EDNA P. KESTER,
His Wife, and WM. F. KETTENBACH and
MARY JANE, His Wife,
to

POTLATCH LUMBER CO., a Corporation.

Warranty Deed.

Dated August 21, 1906.

Recorded Oct. 9, 1906, in Book 43 of Deeds, p. 139.

Consideration, \$2,200.00.

Acknowledged before John D. McConkey, a Notary
Public for Nez Perce County, Idaho, August 28,
1906. [1754—1424]

Mr. GORDON.—It is hereby stipulated by and
between counsel for the respective parties hereto that
the Potlatch Lumber Company was duly incor-
porated under the laws of the State of Maine, and
the Clearwater Timber Company was duly incor-
porated under the laws of the State of Washington,
and that each of them had fully complied with the
foreign corporation laws of Idaho prior to any con-
veyances to them or either of them shown in the evi-
dence in these cases. [1755—1425]

[Testimony of B. M. Gregory, for Complainant.]

B. M. GREGORY, a witness called on behalf of
the complainant, being first duly sworn, testified as
follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. My name is B. M. Gregory.

Q. And are you employed at the Lewiston Na-

(Testimony of B. M. Gregory.)

tional Bank? A. Yes, sir; I am.

Q. In what capacity? A. I am bookkeeper.

Q. How long have you been with the Lewiston National Bank? A. Since March, 1909.

Q. Have you with you the ledgers of the Lewiston National Bank from 1905?

A. From 1905, I have, beginning with January, 3, 1905; I have two of them, in consecutive order.

Q. Have you the ledgers that will show the account of Kittie E. Dwyer with that institution?

A. I have.

Q. Well, will you turn to that account and show the first item that you find in the ledger that you have referred to, and the date of it?

A. On January 3d, 1905, there is a balance brought forward from the previous ledger of \$243.22 of an overdraft.

Q. Now, will you read right through that account and tell the changes that are made in it, whether they are deposits or checks, and what they are, and the dates on which they occur?

A. Then balance brought forward,—I can't give you the date of it because I don't know what date this was, whether it was the day previous to this, or whether there were holidays here; this is the [1756—1426] balance of the night previous.

Q. Well, what is the next day you find?

A. The first entry in here is on the 3d of January, 1905, a \$10.00 check. The next entry is on the 7th of January, two checks, a total of \$13.40. On January 9th, a \$3.00 check.

(Testimony of B. M. Gregory.)

Q. How does the balance stand,—increasing the overdraft?

A. The balance has been increasing, the overdraft.

Q. Then read the increases or reductions as you come to them.

A. On January 10th, a \$5.00 check, increasing the overdraft to \$274.65. On January 13th, two \$5.00 checks, increasing the overdraft to \$284.62. On January 14th, two checks, a total of \$8.15, increasing the overdraft to \$292.77. On January 18, two checks, totaling \$13.75, increasing the overdraft to \$306.52. On January 23d, a \$5.00 check, increasing the overdraft to \$311.52.

Q. Now, continue through the book and announce the date on which you find a reduction of the overdraft. We don't care about the \$5.00 checks.

A. You don't care for me to read these then? I am just simply to run through until I find a reduction?

Q. Yes.

A. On the 1st day of July, 1905, there is a deposit of \$1,263.00.

Q. Now, up to that period the books show that the overdraft had increased until the 30th of July, when the overdraft— A. The 30th of June.

Q. The 30th of June, when the overdraft was how much? A. \$1,239.88.

Q. And on the following day there was a deposit made of \$1,263.00? A. Yes, sir.

Q. Do you know what that deposit was?

A. I do not. [1757—1427]

(Testimony of B. M. Gregory.)

Q. Now, continue through the account, please. What do you find on July 3d in the account of Kittie E. Dwyer?

A. Two checks increasing a small standing overdraft.

Q. Well, it was an overdraft of how much on the 2d of July, 1905? A. \$11.03.

Q. Now, following the account through till you find a reduction of the overdraft of Kittie E. Dwyer's account, what do you find?

A. On the 2d day of October there was a deposit of \$121.50, which reduced the overdraft from \$1,352.60 to \$1,234.50.

Q. One minute. Then from the last date, which was July 3d, the account of Kittie E. Dwyer increased until on October 2d, it amounted to \$1,352.60?

A. October 1st.

Q. October 1st. And on October 2d a deposit was made to her credit of \$121.50, and that left the overdraft \$1,234.50. Now proceed. What is the next entry you find?

A. Three checks on the 3d of October, increasing the overdraft to \$1,380.23.

Q. Just continue through the account until you find that overdraft reduced.

A. Now, on the 18th—

Q. Of what?

A. October; there is a deposit of \$161.25, which reduced the overdraft from \$1,550.11,—

Q. On the 17th?

A. On the 17th, to \$1,388.86 on the 18th.

(Testimony of B. M. Gregory.)

Q. All right. Just continue through the account and point out any reduction that is made in the overdraft and give date of it.

A. On the 18th of November the overdraft was \$2,141.50. On the 20th of November, 1905, there was a deposit of \$3,450.00, which wiped out the overdraft and left a balance to the credit of Kittie E. Dwyer [1758—1428] of \$1,380.50.

Q. Now, follow that account through, and—

A. This is carried into the other ledger.

Q. You state that the account runs from November 27, 1905, when Mrs. Kittie E. Dwyer had a balance of \$1,202.15, and is reduced by small checks until when? A. December 30, 1905.

Q. What is the balance to her credit then?

A. \$575.50.

Q. Now, open the next book and see how the account runs from there on.

A. In this book; that account doesn't end in this book with that date. It is carried into the back part, and continuing here is the same balance, \$575.50.

Q. All right.

A. It is carried forward here.

Q. Yes. Now, continue right through.

A. There is an overdraft appears in this account on the 27th of January, 1906, of \$645.81.

Q. Now, from the period you last gave, showing a balance of five hundred and some odd dollars, it has been reduced by small checks down to this period, has it not? A. Down to this period, yes.

Q. Now, what check was drawn that caused the

(Testimony of B. M. Gregory.)

overdraft, what was the amount of it?

A. Two checks, a total of \$855.00.

Q. One for \$850.00 and one for \$5.00?

A. Yes, sir.

Q. Given on January 27th, or paid on January 27th, 1906, which caused an overdraft of \$645.81, is that correct? A. Yes. [1759—1429]

Q. Now, I wish you would continue through that account and note the next date on which that overdraft was reduced.

A. Reduced by a deposit of \$300.00 on the 6th of February.

Q. And that leaves an overdraft of—

A. \$391.77.

Q. Now, continue through the account until you find it reduced again.

A. On the 28th—

Q. On the 27th, it amounted,—on the 27th of February, 1906, what did it amount to?

A. \$937.78. On the 28th of February it was reduced by a deposit of \$350.00, leaving an overdraft of \$587.78.

Q. Now, continue through the account until you find that overdraft reduced.

A. Do you want those small deposits?

Q. It continued to increase until the overdraft, March 9, 1906, amounted to \$613.03, is that correct?

A. It is correct.

Q. And on the following day a deposit was made of \$100.00, which reduced the overdraft to \$513.03?

A. Yes.

(Testimony of B. M. Gregory.)

Q. Now, follow through the account and note the next occasion when there is a reduction of the overdraft.

A. On March 14th the overdraft amounted to \$539.77. On March 15th there was a deposit of \$500.00, reducing the overdraft to \$39.77.

Q. Now, continue until you find that overdraft reduced.

A. On April 4, 1906, the overdraft amounted to \$684.60.

Q. It had been increased steadily by small checks until it reached that amount?

A. Yes, sir. On April 5th, 1906, there was a deposit of \$500.00.

Q. Which reduced the overdraft— [1760—1430]

A. Reduced the overdraft to \$184.60.

Q. Now, continue through until you find that overdraft reduced. A. There was two deposits.

Q. How much did you reduce it?

A. There was a deposit of \$3,400.00, and checks amounting to \$3,420.00 on the 9th of April, 1906, the net result being an increase of the overdraft of \$20.00, making it \$220.70.

Q. All right. Then on April 10th, on the date the deposit was made, there was still an overdraft the date the deposit was made, the same day there were checks given that left the overdraft still \$220.70, is that correct? A. It did.

Q. Still continue through and tell when that overdraft was reduced. The overdraft continued to in-

(Testimony of B. M. Gregory.)

crease on May 29th, 1906, what was it?

A. \$1,239.92.

Q. Was there a deposit on the following day?

A. On May 31st there was a deposit of \$150.00.

Q. And that reduced the overdraft to how much?

A. To \$1,128.67.

Q. Now, proceed with the account until you find that overdraft decreased.

A. On July 11th, 1906, the overdraft had increased to \$1,789.27. On July 12th, 1906, there was a deposit of \$179.68, reducing the overdraft to \$1,609.59.

Q. Now, proceed until you find the overdraft decreased. I will ask you if the overdrafts continued without intermission to increase until they amounted to \$2,375.20 on September 28, 1906? A. They did.

Q. Now, up to this time, has the account of Kittie E. Dwyer shown a [1761—1431] balance to her credit, with the exception of the one small item that you have read from the account?

A. But the once, I believe.

Q. You have read every instance showing a decrease in the overdraft, have you?

A. I have. On the 30th day of October, 1906, the overdraft amounted to \$2,573.89.

Q. Now, it had continued to increase by small amounts until it reached that amount, had it not?

A. It had. On the 31st day of October there was a deposit of \$200.00, reducing the overdraft to \$2,388.-89. Now, you will notice that every time we have mentioned a reduction the minutes don't show the exact figures, because there have been checks on that

(Testimony of B. M. Gregory.)

same day. I just wish to call your attention to that fact.

Q. Now, proceed through the account and state the next date on which you find the overdraft reduced. I wish you would preface your remarks by saying the overdraft increased until it reached a certain amount on a certain date.

A. I see. On December 3d, 1906, the overdrafts had increased until they amounted to \$3,378.70. On December 4th, there was a deposit of \$81.25, reducing the overdraft to \$3,325.20. On December 15th the overdrafts had increased to \$3,548.85. On December 17th there was a deposit of \$146.65, reducing the overdraft to \$3,412.20.

Q. Now, proceed until that overdraft is reduced.

A. On April 18th, 1907, the overdrafts had increased until they reached the sum of \$4,203.57. On January 19th there was a deposit of \$4,000.00, which reduced the overdraft to \$203.57.

Q. Now, proceed until you find that overdraft reduced.

A. On April 18th, 1907, the overdrafts had increased until they reached the sum of \$1,393.48. On April 19th there was a deposit of \$769.90, which decreased the overdrafts to \$623.58. [1762—1432]

Q. Now, proceed until that overdraft is decreased.

A. On the 27th of April, 1907, the overdraft had increased until it reached the sum of \$689.07. On the 29th of April, 1907, there was a deposit of \$1,000.00, which left a balance to the credit of Kittie E. Dwyer of \$307.43.

(Testimony of B. M. Gregory.)

Q. She continued to have a balance until when?

A. Until the 4th day of June, 1907, when there was two checks, amounting to \$27.00 which overdrew the account \$12.02.

Q. Which left an overdraft of \$12.02? A. Yes.

Q. Will you proceed through the account of Kittie E. Dwyer until you find that that overdraft has been reduced?

A. On the 18th of June, 1907, the overdraft had increased until it amounted to \$580.81. On the 19th of June, 1907, there was a deposit of \$362.00, which reduced the overdraft to \$218.81.

Q. What is the next increase of the overdraft?

A. On the 20th.

Q. The next day? A. The next day.

Q. What does it amount to then?

A. The increase amounts to \$313.75, which raises the overdraft to \$532.56.

Q. On the 22d of June, 1907, what do you find?

A. There is a further increase of \$113.35.

Q. What will that leave? The overdraft amounted to how much?

A. The overdraft amounted to \$645.91.

Q. Now, proceed until you find that overdraft decreased.

A. And on the 24th of June there are two deposits, amounting to \$1,249.50.

Q. Which leaves her a balance to her credit of how much?

A. Which leaves a balance to the credit of K. E. Dwyer of \$562.59. [1763—1433]

(Testimony of B. M. Gregory.)

Q. Now, proceed through that account until you find whether there is another overdraft or not.

A. On the 29th of June, 1907, there was a check issued or paid for \$553.50, which overdrew the account \$9.45.

Q. Will you proceed until you find that overdraft reduced?

A. On July 2d the overdraft had increased until it was \$33.05. On July 3d there was a deposit of \$468.35, which left a balance to the credit of Kittie E. Dwyer of \$418.65; on July 6th the account of Kittie E. Dwyer had been reduced until the balance to her credit was \$197.40, and on the 8th there was a deposit of \$200.43, which left her a credit of \$327.83.

Q. Now, will you follow that account through and tell whether it is materially increased or decreased?

A. On July 25th the account had been reduced until the balance to the credit of Kittie E. Dwyer was 19 cents. On July 26th there was a deposit to the credit of Kittie E. Dwyer of \$245.00, which left a net to her credit of \$235.19. On the 15th day of August, 1907, the account had been reduced until the balance to the credit of Kittie E. Dwyer was \$3.85. On the 16th of August there was a deposit to the credit of Kittie E. Dwyer of \$100.00, which increased the balance to \$88.85.

Q. Go ahead.

A. On August 31st the account had decreased until it amounted to \$19.60, and on the 3d of September there was a deposit to the credit of Kittie E. Dwyer of \$257.70.

(Testimony of B. M. Gregory.)

Q. Leaving a balance?

A. Leaving a balance of \$98.05. On the 13th of September the account had been reduced until the balance to the credit of Kittie E. Dwyer was 30 cents, and on the 14th of September there was a deposit to her credit of \$150.00, and a check of \$50.00 was paid the same day, which left a net credit to Kittie E. Dwyer of \$100.30. [1764—1434]

Q. Just see if you find any big deposits there.

A. On the 21st of September, 1907, there was a deposit to the credit of Kittie E. Dwyer of \$236.50; also checks paid that day in the amount of \$225.28, with the net result that there was a credit, a balance to the credit of Kittie E. Dwyer of \$46.52. On the 4th of October, 1907, there was a deposit of \$150.00 to the credit of Kittie E. Dwyer; also a check paid of \$152.-85, leaving a net balance of \$9.17 to the credit of Kittie E. Dwyer.

Q. Now, I wish you would look through and see if that account is overdrawn any more.

A. Here is a small overdraft.

Q. I don't care for the little ones. Just say the account was again overdrawn on a certain date.

A. The account was overdrawn on October 31, 1907, \$1.10.

Q. Did that overdraft increase or decrease?

A. Here is another little black deposit.

Q. See if you find any other overdrafts.

A. There are one or two small deposits for small amounts.

Q. Well, I don't care about that.

(Testimony of B. M. Gregory.)

A. Here is an overdraft of \$9.00.

Q. The deposits run along, small deposits and small checks, until on February 15th, 1908, it shows a small overdraft of \$9.34? A. \$9.34.

Q. How long does that overdraft continue?

A. To the 17th, until the deposits cover it.

Q. Now, I will ask you to look through the book and see if you find any overdrafts of any material size. State what the overdraft there is.

A. On May 10th, Kittie E. Dwyer's account shows an overdraft of \$4.09.

Q. Does that overdraft continue for any period?
[1765—1435]

A. Until the 1st of August.

Q. When it amounts to how much?

A. The 31st of July it is jumping down until it amounts to \$7.29.

Q. It is always an overdraft? A. Yes.

Q. Then there was a deposit made, was there?

A. On August 1st there was a deposit made, which leaves a balance to her credit of \$104.69. This book closes the 1st of August, 1908; that was when it was transferred to the other book.

Mr. GORDON.—Well, I guess that will be enough.

At this time a recess was taken until two o'clock P. M. [1766—1436]

[Testimony of Lewis M. Gray, for Complainant.]

LEWIS M. GRAY, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Gray, will you state your full name?

A. Lewis M. Gray.

Q. What is your occupation?

A. Special bank accountant, Department of Justice.

Q. Are you familiar with the books of the Lewiston National Bank? A. I am.

Q. Have you before you the ledgers of the Lewiston National Bank? A. Two of them.

Q. From what date?

A. They run from January, 1905, to August, 1908.

Q. And they show the accounts of the depositors covering that period? A. Yes.

Q. I will ask you to look in those ledgers and tell us whether or not Martha E. Hallett had an account with the Lewiston National Bank on the books of that institution. What do you find in the ledgers relative to Martha E. Hallett which you are looking through now?

A. I am looking for her account in one of these ledgers here.

Q. Do you find an account of Martha E. Hallett in the ledgers of the Lewiston National Bank from January, 1906, through August 31, 1908?

A. Yes, there was such an account. It is in the

(Testimony of Lewis M. Gray.)

inactive ledger, and the inactive ledger is not up here.

Q. Have you made an investigation or examination of the books of the Lewiston National Bank to find whether or not Martha T. Hallett did have an account at the Lewiston National Bank?

A. She did have an account in these ledgers in 1907.

Q. Have you a memorandum of that research?
[1767—1437] A. I have that—

Q. Mr. Gray, is there an account of George H. Kester and William F. Kettenbach on the books of the Lewiston National Bank under the head of Kester and Kettenbach?

A. Yes, sir; there is an account of that kind in the ledger, Kester and Kettenbach.

Q. Will you turn to that account and state when it was opened and what the condition of the account was during the period that it ran?

A. The first entry in the account was on the 13th of December, 1906, when the bank paid a check; there was a check charged to their account of \$2,781.50.

Q. Was there a deposit in that account?

A. There was no deposit in the account at all.

Q. Then the account was opened with an overdraft?

A. The account that night showed an overdraft of \$2,781.50.

Q. Now, can you show from day to day whether that overdraft was increased or decreased during its continuance?

(Testimony of Lewis M. Gray.)

A. The first credit that appears on that account was on the 22d of January, 1907; it is a small credit of \$16.51.

Q. What was the standing of the account at that time?

A. The account on the night before was overdrawn \$8,698.73.

Q. Will you point out any date on which that overdraft was decreased?

A. On the 6th day of February, 1907, it was decreased \$10,000.00.

Q. Now, what was it that time?

A. On the 5th of February the overdraft was \$10,301.48; with a small check on the 7th and a deposit of \$10,000.00 showed on the night of the 7th, the overdraft was \$307.68.

Q. Now, do you have any books of the bank that will show whether or not a note was given by Kester and Kettenbach on that date?

A. Yes; the bills receivable register will show that. I find in [1768—1438] the bills receivable book of the Lewiston National Bank this entry: "15,976. That is the number. Dated on the 12th of February, 1907, "Kester and Kettenbach, by W. F. Kettenbach, on demand, at eight per cent., \$10,000.00."

Mr. TANNAHILL.—Is there any memorandum of its payment there?

A. It is marked paid July 9, 1907. That date doesn't accord there, but these dates are rather uncertain. That is supposed to be the date of the note, and that is marked 2-12-07.

(Testimony of Lewis M. Gray.)

Q. (By Mr. GORDON.) That would be the 12th of February?

A. That would be the 12th of February. This credit is on the 7th of February.

Mr. TANNAHILL.—That is marked 2–15.

WITNESS.—No; 07, 2–12.

Mr. GORDON.—All right.

Q. Now, did that leave an overdraft still?

A. That left an overdraft, a small overdraft of \$307.68, an overdraft.

Q. Now, will you continue through that account until you find a decrease in the overdraft?

A. On the 4th day of March there is a deposit to the account of \$900.00. The day before the overdraft was \$534.23.

Q. That left a credit?

A. There was a check of \$50.00 and that left a credit balance of \$315.77. That credit balance runs along until,—on the 1st day of April I find a credit to the account of \$576.00. That increased the credit balance to \$824.77. On the 15th of April there was a credit balance of \$824.77, and on the 16th of April there was a check charged against the account for \$2,685.40. That made that night an overdraft of \$1,860.63.

Q. Now, continue through the account and note when that overdraft is decreased. [1769—1439]

A. On the 18th of June the overdraft was \$6,021.34; on the 19th of June there was a deposit of \$60.00, leaving the overdraft that night \$5,961.34.

Q. Now, was that overdraft ever decreased?

(Testimony of Lewis M. Gray.)

A. Yes. And the next day there was a check charged for \$2,348.80, and a deposit of \$561.70. That left the net overdraft that night \$7,748.44.

Q. That is in June, 1907?

A. In June, 1907. On the 28th of June, 1907, the overdraft was \$9,083.75. On the following day there was a charge of \$430.67, and a deposit of \$250.00. That left the overdraft that night \$9,264.42.

Q. Now, was that overdraft ever decreased?

A. On the 7th day of July the overdraft was \$14,863.52. On the 8th day of July there was a charge against the account of \$10,020.00, and a deposit of \$27,000.00, leaving a credit balance of \$2,116.48.

Q. Do you know what that \$27,000.00 was, by the books of the bank?

A. The books of the bank show that on that day W. F. Kettenbach account was charged \$13,500.00 and George H. Kester's account was charged \$13,500.00. That is, that \$13,500.00 doesn't show on the ledgers, but there was a charge of \$35,197.00, and looking that up on the books I found that there was several checks went in making up \$35,197.00, and this \$13,500.00 was included in that \$35,197.00.

Q. Were any notes given that day?

A. Apparently there were. July 9th, 1907, No. 16202, George H. Kester and Edna P. Kester, six months, due January 9, 1908, \$20,000.00. It is marked paid \$7,000.00 on the 23d of August, and the balance on the 28th day of December.

Q. 1907? A. 1907.

(Testimony of Lewis M. Gray.)

Q. What was the overdraft in July, July 9th, 1907?

A. Of whom? [1770—1440]

Q. Kester and Kettenbach.

A. Kester and Kettenbach? There was no overdraft at the close of business on July 9th, 1907. That was taken up with that \$27,000.00; that was on the morning of the 9th.

Q. What was it on the 6th of June?

A. On the 8th of July it is \$19,863.52.

Q. What is the overdraft?

A. That is the overdraft. On the 9th that \$27,000.00 went in and left a balance.

Q. That account you speak of being charged was the personal account of William F. Kettenbach?

A. William F. Kettenbach, thirteen, and George H. Kester.

Q. Was that charged as an overdraft on the personal account?

A. The \$13,500.00 against W. F. Kettenbach account made an overdraft that night, but the next day it was made good.

Q. How? A. He deposited \$15,000.00.

Q. Did he give a note that day?

A. No, he did not. No note appears in here. That \$15,000.00 apparently was cash.

Q. Now, can you show the notes given by Kittie E. Dwyer and discounted by the Lewiston National Bank?

A. Yes; the first note I find on here of Kittie E. Dwyer's—

Q. On where?

(Testimony of Lewis M. Gray.)

A. On the bills receivable for the Lewiston National Bank, No. 13,411, on the 3d of July, 1903, William Dwyer and Kittie E. Dwyer, endorsed W. F. Kettenbach, one year, due July 3, 1904, \$2,800.00. That is marked as paid June 30, 1905.

Q. What is the next you find?

A. The next I find is No. 13650, dated the 28th of December, 1903, Kittie E. Dwyer and William Dwyer, on demand, \$1,750.00. That is marked [1771—1441] paid June 30, 1905.

Q. Who was that endorsed by?

A. It wasn't endorsed by anybody. There is nothing said; so far as this book is concerned it seems to be what is known as single name paper. The next is 13,034, dated November 16, 1904, William Dwyer and Kittie E. Dwyer, demand, \$1,000.00. That is marked paid June 30, 1905. No. 14,904, 6-29, 05, William Dwyer and Kittie E. Dwyer, one year, June 29, 1906, \$7,100.00. Marked paid October 29, 1908. Now, that \$7,100.00, that note for \$7,100.00 that I just read off, takes up the three notes I read off before, \$2,800.00, \$1,750.00 and \$1,000.00, and an overdraft shown in the ledger there of about \$1,300.00.

Q. What is the next note you find? Tell what they are for.

A. The next note I find that went to her credit is 15,356, dated March 10, 1906, M. L. Goldsmith, 90 days, due June 10, 1906, \$500.00. Paid December 31, 1906. That went to her credit in the ledger. No. 15,942, dated January 18, 1907, Kittie E. Dwyer and William Dwyer, payable on demand, \$4,000.00.

(Testimony of Lewis M. Gray.)

Marked paid December 31, 1907.

Q. Do you know what that was for?

A. That was for an overdraft of the account. Page 296. No. 16,102, April 23, 1907, Kittie E. Dwyer and William Dwyer, on demand, \$1,000.00, marked paid December 31, 1907. That was for an overdraft. 16,283, August 15, 1907, William Dwyer, on demand, \$100.00, September 3, 1907. That was credited to the account of Kittie E. Dwyer.

Q. Was there an overdraft then?

A. No. 16,342, September 14, 1907, William Dwyer, on demand, \$150, marked paid June 8, 1908.

Q. Was that to Kittie Dwyer's account?

A. Those all went to Kittie E. Dwyer's account. 16,458, December 30, 1907, William Dwyer, Kittie E. Dwyer, one year, due December 30, 1908, \$5,800.00, marked paid 10/29/08.

Q. How much was that for? [1772—1442]

A. \$5,800.00.

Q. Do you know what that was for?

A. That was to renew that \$4,000.00 and the \$1,000.00, and the balance was an overdraft. In register No. 3, Bills Receivable of the Lewiston National Bank, 17,042, dated December 31, 1908, William Dwyer and Kittie E. Dwyer, on demand, \$14,056.00, marked paid February 3, 1909. On the same day in the cash book of the Lewiston National Bank all those former notes that I have read off were credited up, \$7,100.00 and \$5,800.00, and there was some interest on an overdraft, making it \$14,056.00. That \$14,056.00 ended up on the 3d day

(Testimony of Lewis M. Gray.)

of February, 1909; that is charged on the cash-book to the Idaho Trust Company; they took it out of the Lewiston National Bank.

Q. Anything since then?

A. Nothing since then. That was the end of that business.

Q. Now, have you any of the deposit slips of Kittie E. Dwyer that are a part of the records of the Lewiston National Bank?

A. Yes, there are some here, some few that I ran across.

Q. Are you acquainted with the handwriting of George H. Kester?

A. Yes. Here is one part of a ticket of the Lewiston National Bank, deposit by Kittie E. Dwyer, on the 7th of November, 1903, \$266.55. On the margin it says Ex. Bill by K. & K. That is in George Kester's handwriting. On May 31, 1906, Kittie E. Dwyer, \$150.00.

Q. Was that a deposit slip?

A. That is a deposit slip, deposited in the Lewiston National Bank, Kittie E. Dwyer, by George H. Kester, one half payment on Little George, horse, buggy, etc.

Q. Whose handwriting is that?

A. That is George Kester's. December 4th,—there is no year,—but that was 1906,—K. E. Dwyer deposit ticket Lewiston National Bank, check 123, \$81.25, K in a circle. That is Robnett's handwriting. He made out that ticket. On the 17th of December, 1906, Kittie E. Dwyer, [1773—1443]

(Testimony of Lewis M. Gray.)

\$146.65; in the margin there is a K in a circle.

Q. Whose handwriting is that?

A. That handwriting I don't know. I am under the impression that that is Bert Chapman; I am not sure about it. It isn't Kester, nor Kettenbach nor Robnett.

July 3, 1907, deposit slip deposited by Kittie E. Dwyer \$468.35. In the margin it says K. & K. That is by George Kester.

August 31, 1907, deposit ticket, Kittie E. Dwyer, \$12.50, by W. F. K., account Frank Bonney. That is in Will. Kettenbach's handwriting.

September 24, 1907, \$60.00, deposit slip, this is Kittie E. Dwyer's deposit slip, check to William Bollinger, apparently, N. & N., \$60.00.

Then on March 30, 1906, deposit ticket Kittie E. Dwyer, \$320.00 by George H. Kester, in the handwriting of George H. Kester. That is all the tickets, apparently.

Q. When was that deposit of \$320.00?

A. \$320.00 was on the 30th of March, 1906.

Q. What is this paper that you have there? What is this? (Indicating paper.) Where did you get that?

A. I don't know who made this out. It was given to me by one of the special agents to find out whether a check was charged to Kittie E. Dwyer's account, and I only know what they put there, copy of a counter check. I looked it up on the ledger and found that there was such a check charged, and that *was* about the day she deposited \$320.00, and that

(Testimony of Lewis M. Gray.)

made the overdraft \$649.60 at that time.

Q. You don't know where that came from?

A. I don't know where it came from originally, no; I haven't the slightest idea.

Mr. GORDON.—Do you know anything about that, Mr. Tannahill?

Mr. TANNAHILL.—No.

Mr. GORDON.—Q. What else have you there of Kittie E. Dwyer's? [1774—1444]

A. I have a list here of all the credits to her account.

Mr. TANNAHILL.—You have been over all that.

WITNESS.—You have been over all of that.

Mr. GORDON.—Q. You can't tell who the credits were made by?

A. Well, yes, you can tell in most cases who they were made by, but you can't tell what they are.

Q. You have gone through all that practically, haven't you? A. Yes.

Q. I will ask you if you have before you a certified copy of the report to the Comptroller of the Currency of the condition of affairs of the Lewiston National Bank? A. Yes; two years.

Q. Which is the first one you have?

A. This is the first one; January 26, 1907.

Q. That is a report of the bank?

A. Report of the condition of the bank on the 26th of January, 1907.

Q. By whom was that signed?

A. By George H. Kester, cashier, and attested J. Alexander, O. E. Guernsey and J. B. Morris, direct-

(Testimony of Lewis M. Gray.)

ors. That is dated the 29th of January, but it is at the close of business on the 26th of January.

Q. It reports the condition of the bank on the 26th of January? A. Yes.

Q. Now, there is a schedule on that under the heading, "Loans and discounts secured by real estate mortgages or other liens on realty." Will you read that report and state what it shows?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

A. 1907, January 26th, Kittie E. Dwyer, amount carried on books \$7,100.00; amount of prior liens on property, if any, left blank; estimated actual value of property \$12,000.00; date when security was taken June 29, 1905; state whether taken for debts previously contracted. [1775—1445] All taken for debts previously contracted.

Then comes William Shultz, \$1,200.00, actual value \$2,000.00; date when taken, September 20, 1904.

C. S. White, \$5,000.00; estimated actual value \$10,000.00; security taken November 27, 1903.

And Lillian Van Brunt, \$1,114.00; estimated actual value, \$2,000.00; security taken December 20, 1904. Then out in the margin where it says "state whether taken for debts previously contracted," "all taken for debts previously contracted," covers all four of those.

Q. Will you proceed with those?

A. Report to the Comptroller of the Currency—

Mr. TANNAHILL.—We object to any evidence relative to the reports of the Comptroller of the Cur-

(Testimony of Lewis M. Gray.)

rency on the ground that it is incompetent, irrelevant and immaterial.

A. (Continuing.) —at the close of business on the 22d day of March, 1907.

Mr. GORDON.—Q. That is the report of—

A. Report at the close of business on the 22d of March, 1907.

Q. What report is it?

A. The report of the Lewiston National Bank.

Q. By whom was it signed?

A. The report is made on the 1st day of April, 1907, and signed by George H. Kester, cashier, J. Alexander, William A. Libert, and J. B. Morris. Schedules under the head of "Loans and discounts secured by real estate mortgage or other liens on realty," Kittie E. Dwyer, \$7,100.00; amount of prior lien on property, if any, is left blank. Estimated actual value \$12,000.00; date when security was taken, June 29, 1905.

Lillian Van Brunt, \$1,114.00; estimated actual value of property, \$2,000.00; date when security was taken, December 20, 1904.

C. S. White, \$5,000.00; estimated actual value of property, \$10,000.00; [1776—1446] date when security was taken, November 27, 1903; all taken for debts previously contracted.

The report of the condition of the Lewiston National Bank at the close of business on the 3d day of December, 1907, to the Comptroller of the Currency,—

Mr. TANNAHILL.—The defendants make the same objection.

(Testimony of Lewis M. Gray.)

WITNESS.—(Continuing.) —made on the 4th day of December, and signed Edward C. Smith Cashier, Frank W. Kettenbach, J. Alexander and R. C. Beach, directors. In the schedules, under the head of—

Mr. TANNAHILL.—What date is that?

A. On the 3d day of December, 1907. Under the head of schedules, "Loans and discounts secured by real estate mortgage or other lien on realty," Kittie E. Dwyer, \$12,000.00; amount of prior lien on property, if any, none. Estimated actual value of property \$25,000.00. Date when security was taken, January 29, 1905, July 18th, 1907. State whether taken for debts previously contracted. Yes.

Report of the Lewiston National Bank to the Comptroller of the Currency at the close of business on the 14th day of February, 1908. The report is made out on the 21st day of February, 1908, and signed Edward C. Smith, Cashier, Frank W. Kettenbach, William A. Libert, and J. Alexander, directors. Under the head of loans and discounts secured by real estate mortgage or other liens on realty, William Dwyer, \$12,100.00; amount of prior lien on property, if any, none. Estimated actual value of property, \$25,000.00; date when security was taken June 29, 1905, and February 17, 1906. State whether taken for debts previously contracted. Yes. I guess it doesn't make any difference, but they made a mistake in putting that down there; it should be \$12,900.00 instead of \$12,100.00.

Report to the Comptroller of the Currency by the Lewiston National Bank at the close of business on

(Testimony of Lewis M. Gray.)

the 15th day of July, 1908, signed Edward C. Smith, cashier, J. Alexander, J. B. Morris and William A. Libert, directors. Schedules, under the head of loans and discounts [1777—1447] secured by real estate mortgages or other liens on realty, William Dwyer, \$12,900.00; amount of prior lien, if any, none. Estimated actual value of property, \$25,000.00; date when security was taken, January 29, 1905. State whether taken for debts previously contracted. Yes.

Report to the Comptroller of the Currency by the Lewiston National Bank at the close of business on the 23d day of September, 1908, schedules, under the head of loans and discounts secured by real estate mortgages or other liens on realty, William Dwyer, \$12,900.00; amount of prior lien on property, if any, none; estimated actual value of property, \$25,000.00; date when security was taken, June 29, 1905. State whether taken for debts previously contracted. Yes.

Q. What is the date of the next one?

A. I didn't read,—there is one in between, on the 14th day of May, 1908, but it is the same as the preceding one.

Q. May, 1908. Now, there are two after that, aren't there?

A. Yes, but they don't come in after September, 1908.

Q. Now, will the register of the Lewiston National Bank show whether or not there was a note given by the firm of Naylor & Norlin, in about the sum of

(Testimony of Lewis M. Gray.)

\$30,000.00, in July, 1907?

A. No, I don't think it will. I find in the register of bills receivable of the Lewiston National Bank, No. 16,235, dated June 22, 1907, Naylor & Norlin Company, Limited, N. C. Naylor, President, endorser George H. Kester, demand \$15,000.00, marked paid on the 15th day of August, 1907. I find No. 16,256, in the same book, August 2, 1907, Naylor & Norlin Company, Limited, by George H. Kester, endorser George H. Kester, demand \$5,000.00, marked paid August 15, 1907.

Q. Now, were there any reports to the Comptroller by the Lewiston National Bank covering that period?

A. Wait a minute. There is another one here in the same book, No. 16,276, August 12, 1907, Naylor & Norlin Company, Limited, N. C. Naylor, president, endorser George H. Kester, demand \$20,000.00. That [1778—1448] was paid by four installments, December 28, 1907, \$5,000.00; April 3, 1908, \$5,000.00; July 13, 1908, \$5,000.00; November 18th, \$2,000.00, and the balance marked paid February 2, 1909, \$3,000.00.

Q. When was that—1909? A. Yes.